

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 23, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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

APPROVAL OF MINUTES: **Senator Nye** moved to approve the minutes of January 16, 2017. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Idaho Commission of Pardons and Parole and Justice Reinvestment (JRI).** **Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole (Commission) expressed appreciation for the opportunity to speak to the Committee about the Commission. She began by explaining the structure of the Commission (attachment 1, page 1) relating that there are five part-time commissioners, appointed by the Governor, who make the parole decisions. Representing different areas of the State, the commissioners meet solely to make parole decisions. These commissioners do not work in the Commission offices. **Director Jones** noted that in addition to the commissioners who make the parole decisions, there are 33 people who make up the Commission staff including the Executive Director, a deputy director, an operations manager, hearing officers, and administrative staff who all support the work of the Commission.

Director Jones described the Commission workload during the sessions. Parole hearing sessions are approximately two weeks long and occur once a month (attachment 1, page 2). During the sessions the commissioners hear cases either face to face or by performing administrative and file reviews. **Director Jones** detailed the procedures involved in determining eligibility for parole. She pointed out that there is no right to parole in Idaho. The granting of parole depends on the decision of the Commission and is based on risk factors. The details of the procedures followed by the Commission, and the factors used in determining the outcome of the parole request, were provided by **Director Jones** (attachment 1, pages 2-4). She detailed factors that the commissioners are required to study:

1. Criminal history
2. Nature of the crime
3. Risk assessments
4. Institutional behavior
5. Institutional programming
6. Victim/prosecutor input, if available

She advised the Committee of the procedures followed in the case of the granting or the denying of parole (attachment 1, page 4).

Director Jones pointed out that the commissioners are also responsible for addressing parole revocations. The commissioners receive the violation report from the offender's parole officer. The Commission staff reviews the report to determine if the parolee is eligible for intermediate sanctions required in some situations under JRI. If parolees do not meet the requirement for an intermediate sanction, they are scheduled for a revocation hearing. **Director Jones** explained that the hearing officer's role is to determine if the parolee is or is not guilty of any violations. If the parolee is guilty, the hearing officer can administratively impose sanctions, or the hearing officer can schedule a hearing before the Commission for revocation of parole. If no violation has been committed, the parolee can be restored back to the community under the original parole conditions. She indicated that the commissioners can deny or revoke parole and then schedule a hearing later. In serious situations the parole can be revoked and the offender must serve his/her full term (attachment 1, page 5).

Senator Anthon referred to legislation last year which addressed technical violations of parole in cases of violent crimes or crimes of a sexual nature. He inquired if there has been an increase in the number of those parolees coming back for full review hearings. **Director Jones** replied that the Commission does not have a lot of data. There have been more offenders coming back for revocation, and this situation has created a workload issue for the Commission but it has produced increased safety for citizens. She indicated that prior to the legislative change, repeat offenders of violent or sexual crimes often were released back into society. Now there has to be a review of the nature of the violation and the risk involved in continuing the parole. Since this legislation has been in place, no violators of those two types of crime have been released. **Senator Anthon** asked if anyone is keeping a record of these revocations. **Director Jones** responded that there is no record at this time, but she will compile data for the Committee if desired.

Senator Hagedorn asked if two weeks out of the month is enough time. **Director Jones** responded that it is not enough time. She asserted that more time is being added. Alternatives to managing the workload include trying to keep the time frame short for a person to come before the Commission and working on motions to address the issue. **Senator Hagedorn** inquired regarding her perception of the roadblocks to keeping up with the workload. **Director Jones** specified the volume of work as the greatest contributor to the workload. Because the time the commissioners work is nearing full time, she emphasized that the State needs to decide if they want to have full-time commissioners. That same workload spreads across all of the staff both in preparing for the parole hearings and in the follow-up work following the hearing. **Director Jones** declared that the Commission has had the same structure for a long time, but the workload, the flow of people through the system, the nature of the hearings, and the nature of the prison population all have changed. She observed that JRI and the focus on best practices have produced a positive result. The lower risk people who were sitting in prison have been released, but that leaves a lot of people who are not low-risk. Those who are in jail now require more time and difficult decisions.

Senator Burgoyne asked how commissioners are compensated. He requested her views on having part-time or full-time commissioners and what considerations would apply to making a decision. **Director Jones** advised that the commissioners' pay is based on day of service. They are paid only for the days they sit for hearings, but not for the preparation for those hearings. Preparation for the hearings and reviewing the intensive reports may take up to a week and is done on their own time. They receive \$200 per day by statute from the Commission's personnel budget. They are also paid for travel, hotel, and meals. **Director Jones** asserted that the personnel budget is stretched when additional hearing days have to be added and commissioners are brought in from around the state requiring the payment of their expenses away from home. One of the considerations is whether or not the State wants a full-time commission which would be more efficient but would add more cost. Adding more commissioners is another possibility being considered. **Senator Burgoyne** asked if consideration has been given to having hearing officers do the preliminary work, gather records, and then make a recommendation to the commissioners. **Director Jones** indicated that they do that now for regular parole hearings and decisions are made administratively. Revocation hearings involve concerns about due process.

Director Jones discussed parole release trends indicating an increase in paroles. She explained that this increase was due to a change in the criteria for parole. The therapeutic community program was accelerated and ultimately eliminated because it was not working well, so low risk inmates were released on parole, including all of those in the therapeutic community program. The statistics now show the number of releases to be more consistent with the norm. She referred to the graph showing the number of people committing new violations per month which reveals a significant upward trend since 2014. She pointed out that this increase results in an increase in administrative paperwork, parole officer work, and commissioners' efforts (attachment 1, page 6).

Referring to the graph on drug and property offenders, **Director Jones** reviewed the rates for granting paroles, denying paroles, and extending parolees to their full sentence term. The graph shows that 49 percent of drug and property offenders were paroled in 2016 as opposed to 35 percent of sex and violent crime offenders. She advised that drug and property offenders are more likely to recidivate.

Senator Burgoyne referred to the graph showing the increase in the number of violations in 2016 and asked if there is an increase in the number of people violating or if it is an increase in rate. **Director Jones** replied that the graph shows raw numbers, i.e. the actual number of people who are violating. She reported that discussions with the Department of Correction (IDOC) indicated that the rate of violations was reasonably flat, but starting to rise. **Director Jones** explained this disparity may be related to the use of sanctions whereby a parole officer will write three sanctions before the parole is revoked.

Senator Burgoyne inquired if there is a problem with some inmates being released who shouldn't be. **Director Jones** answered that, although she couldn't answer with certainty or science, she could share her theory. She has observed some issues regarding JRI and the 90 and 180 day sanctions. The sanctions seem like a good idea. They give us tools allowing the Commission to hold violators with issues that can be contained and give them sanctions as opposed to revoking parole and keeping them longer. However, there was no consideration of crime types so violators recidivate until they reach the maximum number of sanctions. **Director Jones** asserted that another problem has resulted from a rise in the number of people with higher scores for the risk to recidivate. Consequently, the decision for whom to parole is more difficult. If the Commission does not parole enough inmates, the prison will quickly become overcrowded. **Senator Burgoyne** expressed appreciation for the Director's professional insights on this difficult situation.

Senator Hagedorn inquired if, in relation to sanctions, attention has been paid to preparing a shared matrix for IDOC and the Commission in order to identify inconsistencies in reporting new offenders and repeating offenders. **Director Jones** replied although the Commission is not working with the same matrix as IDOC, they are coordinating their information. She explained that some of the statistics presented are from IDOC, and she indicated that IDOC could analyze their numbers to align with those of the Commission. She related that she reviews daily the number of people who are serving sanctions, and the numbers are going up for both sanctions and revocations. **Director Jones** advised that she would meet with IDOC with the intent of coordinating their information.

Senator Hagedorn asked if providing the commissioners with data for each individual regarding recidivism and type of violation would help the commissioners to decide the appropriate disposition of the case. **Director Jones** responded that the matrix and data from DOC is provided to the commissioners as well as any other information relevant to the commissioners' work. She specified that there needs to be a better way to analyze recidivism. She assured the Committee that the Commission and IDOC will be working together to solve this problem.

Chairman Lodge asked if the Commission's technology needs have improved in order to analyze data in a more effective manner. She also inquired what the cost is to hold a parole hearing. **Chairman Lodge** mentioned that the cost to hold a person in county jail is \$45.00 per day and they receive no programming. She indicated that the cost of incarceration could be used for programming for parolees. **Director Jones** stated that the cost of the hearing is known, but the cost to complete the revocation process is not known as each case is different. In regard to the county jail issue, **Director Jones** pointed out that even if there were no sanctions for parolees and they went directly to revocation, they still have to be housed somewhere. If the State facilities are full, they will be housed in the county jails.

Senator Burgoyne asked if the budget has grown to support the addition of more parole officers, or if the case load increased. **Director Jones** stated that parole officers are under the purview of the IDOC. She then referred to Chairman Lodge's previous question regarding technology. She reported that the JRI changes provided funds for the Commission to hire a business analyst to help with technology. This analyst helped to develop a system using the technology that the Commission already had in a more effective way. With so many changes put into place at the time JRI was instituted, and additional changes which have been made since, it is difficult to have an accurate measurement.

Senator Foreman disclosed that with a background in law enforcement he had some concerns with JRI. He asked if JRI is putting pressure on the Commission to get people out of the prisons. **Director Jones** assured Senator Foreman that the commissioners do not feel pressure. They consider the merits and level of risk of each case individually. The commissioners' main focus is the risk to the community, not meeting a target percentage for granting paroles.

Chairman Lodge expressed appreciation for the Director's input as there is work underway for changes and updates to JRI.

RS 24989C1 **Relating to Funeral Processions to revise penalties for certain violations.** **Michael Henderson**, Counsel of the Idaho Supreme Court, explained that the Supreme Court has a constitutional responsibility to identify defects and omissions in the law. **RS 24989C1** addresses Title 49, chapter 27, which has provisions for how funeral processions are to be conducted. Idaho Code § 49-2701(4) requires pedestrians and operators of vehicles yield the right-of-way to funeral processions, and Idaho Code § 49-2704 forbids drivers from other acts that would interfere with a procession. Idaho Code § 49-2706, sets the penalty as a misdemeanor and punishable only by a fine. **Mr. Henderson** indicated that if this is the penalty, the violation should be an infraction unless it was knowing and intentional. This amendment would correct that error. The infraction would carry a fine of \$33.50 and a total penalty with court costs of \$90.00. The misdemeanor would be punishable by up to six months in jail and a fine of up to \$1,000.

Senator Anthon asked for the intent of the infraction. **Mr. Henderson** replied that with an infraction you are required to operate a vehicle correctly. So it would be a moving traffic violation.

MOTION: **Senator Anthon** moved to print **RS 24989C1**. **Senator Hagadorn** seconded the motion. The motion carried by **voice vote**.

RS 24990 **Relating to the Child Protective Act to revise a definition and to make technical corrections.** **Michael Henderson**, Counsel of the Idaho Supreme Court, indicated that this is a defect bill to correct two errors regarding a protective order. He remarked that last year S 1328aa was enacted making several changes to the Child Protective Act. It contained two technical errors in the definition of "protective order" in Idaho Code § 16-1602(34). Regarding the first error, in referring to protective orders issued prior to an adjudicatory hearing, the code reference should have been Idaho Code § 16-1615(8). The second error was the failure to mention protective orders issued following an adjudicatory hearing as provided in Idaho Code § 16-1619(10). This bill would correct these errors in the definition of "protective order."

MOTION: **Senator Hagadorn** moved to print **RS 24990**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24991 **Relating to Administrative Judges.** **Michael Henderson**, Counsel of the Supreme Court, cited Idaho Code § 1-907, which lists powers and duties of administrative district judges. He pointed out that the areas covered are now addressed in detail in the Misdemeanor Criminal Rules and Infractions adopted by the Supreme Court, and they have been made uniform throughout the State. This bill will simply remove the outdated provision.

Senator Lee declared a potential conflict of interest pursuant to Senate Rule 39(H) but intended to vote.

MOTION: **Senator Burgoyne** moved to print **RS 24991**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

RS 24992 **Relating to criminal procedure to revise a provision regarding who may apply for relief.** **Michael Henderson**, Counsel of the Idaho Supreme Court, advised that in some cases defendants can have their convictions or guilty pleas set aside or can have a felony conviction reduced to a misdemeanor if they have been on probation and met additional conditions. He cited some confusion in the language dealing with relief for a misdemeanor. He explained that the intent of the law was that if the individual were convicted of a misdemeanor, had a suspended sentence, and had successfully completed probation, he/she could apply for relief. This bill will clarify the intent and eliminate confusion.

Senator Burgoyne stated that he did not see any conflict. **Mr. Henderson** responded that sometimes the judges are confused. This bill will clarify the intent for the judges. **Senator Burgoyne** stated that the amendment does not address the possibility that subsection 5 controls all misdemeanor cases, but controls only the sentence issue and not the nature of the case, i.e. felony or misdemeanor. He stated he was confused mainly by the amendment, not the original law. **Mr. Henderson** explained confusion arising from subsection 5 wherein people saw it as the controlling factor in misdemeanor cases including all of the conditions leading to the eligibility for relief.

MOTION: **Senator Lee** moved to print **RS 24992**. **Sentor Foreman** seconded the motion. Motion carried by **voice vote**.

PRESENTATION: **Chairman Lodge** requested that Kimberly Simmons present her report on the Idaho State Public Defense Commission at a later date.

ADJOURNED: There being no further business before the Committee at the time, **Chairman Lodge** adjourned the meeting at 1:44 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary