

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Friday, February 09, 2018

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow

**ABSENT/
EXCUSED:** Vice Chairman Malek

GUESTS: Andrea Sprengel, Kevin Mickelson, Idaho Correctional Industries (CI); Matthew Conde, AAA; Charles Robinson, Symms Fruit Ranch; Bill Clayton, CTE; Dennis Tanikuni, Idaho Farm Bureau; Barbara Jordon, ITLA; Jim Tibbs, Larry Maneely, Ada County Board of Commissioners; Sandy Jones, Parole Commission; Noel Barlow-Hust, Gypsie Akers, Darlene Haley, Henry Atencio, Idaho Department of Correction (IDOC); Tom Arkoosh, IACDL; Holly Koole, IPPA; Mark Estess, ICOPA; Kathy Griesmyer, ACLU; Russell Westerburg

Chairman Luker called the meeting to order at 1:31 p.m.

S 1208: **Sen. Lodge** introduced **Andrea Sprengel**, Financial Manager, Idaho Correctional Industries (CI), who runs the agriculture inmate work program to present **S 1208**.

Ms. Sprengel stated the agricultural inmate work program provides a work opportunity for 200-250 inmates, supplying a steady workforce for six agricultural companies throughout the state to grade, sort, package, plant and harvest perishable food products. **S 1208** amends statutory language to allow non-edible horticultural products to be included in the types of work in which inmates can participate. Ms. Sprengel reported on the programs operating capacity and how the amendment would provide a more steady level of work all year by allowing work in the off-season to be obtained. She advised that potential employers must certify they are unable to attract and maintain a non-inmate work force, and CI consults with the Idaho Department of Labor (IDOL) to set a prevailing wage for the location and nature of the work to be performed by the inmates. Ms. Sprengel explained the prevailing wage became part of the billing rate, updated with the IDOL 's prevailing wage information every year, which is billed to the employer along with taxes and workers' compensation, so that inmate costs to employers are comparable to a non-inmate worker costs. Idaho Code §20-4012 currently prevents CI from providing workers' compensation to inmates participating in their programs, but billing workers' compensation costs and the prevailing wage costs to employers ensures no inmate worker discounts are given and discourages non-inmate worker displacement. The funds received from the agricultural employer are distributed to the inmate, IDOC and CI. CI uses the funds to cover the program operating costs of transportation, security, food, supplies and program overhead. CI has current plans to work with the IDOC to restructure the distribution of funds that will pay inmates a higher amount. Participation by inmates in the program is voluntary and inmates must be in a minimum security status with permission to leave the complex. Injuries are handled by the company that the state has currently contracted with for medical care.

In response to committee questions, **Ms. Sprengel** replied CI has plans to talk with IDOC about re-evaluating inmate wages, and inmates with minor injuries are returned to the facility for care unless they require a specialty doctor or emergency room care or have serious injuries, in which case Idaho has a supplemental policy covering dismemberment or death. She also explained inmates can work alongside civilians when the employer and staff attend IDOC boundaries training to learn the rules of working with an inmate regarding contraband and appropriate relationships.

Bill Clayton, founder of Clayton Tree Farm in Nampa and Wilder; **Charles Robinson** Food & Safety Director, Symms Fruit Ranch; **Noelle Barlow-Hust**, Warden, South Women's Correctional Facility; **Gypsie Akers**, former inmate with IDOC; **Darlene Haley**, inmate at South Boise Women's Correctional Center; and **Dennis Tanikun**, Assistant Director of Government Affairs, Idaho Farm Bureau spoke in support of **S 1208** saying agricultural workers are needed to harvest crops and trees and agricultural employers are unable to get the workers they need even with raised pay scales and bonuses. Well-behaved inmates get a chance for fresh air, to learn new employment skills and a good work ethic, make \$1.65 an hour with an occasional bonus, to work year round, and can be provided job opportunities or letters of recommendation to help with employment upon inmate release from incarceration.

In response to committee questions, **Mr. Robinson** informed the committee inmates learn to be checkers, tally, prune and to drive tractors, forklifts and use chain saws.

Kathy Griesmyer, Policy Director for ACLU Idaho, testified as a neutral party on **S 1208**. She acknowledged the benefits of the agricultural inmate work program for many of the reasons cited by previous testifiers. She questioned whether the IDOC's current maximum coverages for medical and accident insurance would adequately cover a catastrophic inmate injury. She stated the merits of moving forward outweighed holding back support for the bill, but she urged the Committee to make sure inmates have adequate protections.

MOTION:

Rep. McDonald made a motion to send **S 1208** to the floor with a **DO PASS** recommendation.

Reps. Chaney, Zollinger, Gannon, Wintrow, expressed concerns with the supplemental policy coverage for permanent disability and the increased likelihood of more hazardous work opening up under **S 1208** and the life-long employment and economic impact to a disabled inmate and to the state fiscal burden.

Sen. Lodge was called upon to answer a question from **Chairman Luker** regarding her willingness to address the lack of protections that is the source of many committee member concerns, and she replied that those concerns can be addressed.

SUBSTITUTE MOTION:

Rep. Chaney made a substitute motion to send **S 1208** to General Orders.

Sen. Lodge was called upon to answer questions from the committee regarding whether she felt the fastest and easiest way to address committee concerns about inmate pay, health care insurance and workers' compensation coverage would be to send **S 1208** to General Orders or to do a trailer bill that answers committee concerns. She replied she would prefer to work with CI and the agricultural employers on a trailer bill to bring back before the committee during this legislative session. Committee members commented that with this commitment to protect the safety of the inmate workers, as well as help the agricultural industry, the original motion could be addressed.

**VOTE ON
SUBSTITUTE
MOTION:**

Chairman Luker called for a vote on the substitute motion to send **S 1208** to General Orders. **Motion failed by voice vote.**

**VOTE ON
ORIGINAL
MOTION:**

Chairman Luker called for a vote on the original motion to send **S 1208** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kauffman** will sponsor the bill on the floor.

RS 25823C2:

Sen. Burgoyne explained **RS 25823C2** requires the installation and operation of an ignition interlock device on all vehicles operated by an individual with first-time Driving Under the Influence (DUI) status for a period of one year, concurrent with the driver's license suspension already in law. Ignition interlock devices are already required for repeat offenders, and this proposed legislation extends the requirement to first-time offenders. An exception is proposed where there is clear and convincing evidence that the person in DUI status will not present a danger to the public or where there are exceptional or mitigating circumstances demonstrating the installation is unnecessary or unwarranted. Each county has a County Interlock Device Fund which can be used by DUI offenders to procure the devices. The proposed legislation's effective date is January 1, 2019 .

MOTION:

Rep. Dayley made a motion to introduce **RS 25823C2**. **Motion carried by voice vote.**

RS 26060:

Jim Tibbs, Ada County Commissioner, informed the committee the county is responsible for providing a program to supervise misdemeanor offenders whose sentences include probation, but they are not to be obligated beyond the funds generated by fees pursuant to Idaho Code §31-3201D, which obligates probationers to pay a fee set at a maximum of \$75 per month for their monthly supervision during the probation period. The fees generated from the probationers are to be used exclusively to support the program. Ada County transitioned to Odyssey in August 2016 which resulted in all payments received by the clerk being distributed by the **Idaho Supreme Court's** (ISC) priority of payments order which places misdemeanor probation payments in tenth place in the order. When the county clerk accepts a payment from the probationer, it gets applied to fines, fees or costs listed ahead on the list, and each item on the list needs to be remitted in full before payments are applied to the next item on the list. The results are misdemeanor probation payments being delayed or not received at all, causing a \$250,00 decrease in county revenue between FY2016 and FY2018. Commissioner Tibbs outlined the financial application problems for probationers caused by the list order in the Odyssey program.

In response to committee questions, **Commissioner Tibbs** replied the proposed legislation would give counties the option to take their probation fees out of the Odyssey system and give them back to their county misdemeanor probation funds or to leave them in Odyssey. He further stated Ada County has unsuccessfully tried to resolve their disbursement priority issues with the ISC, and Ada County cannot guarantee the probation program won't be cut.

Chairman Luker responded to committee concerns regarding **RS 26060** conflicting with **RS 26019**, which addresses the ISC's desire to have the legislature make a policy decision regarding prioritization of fees and payment distribution within the Odyssey system by stating that both can be printed and heard together.

Commissioner Tibbs introduced **Erica White**, Deputy Prosecuting Attorney, Ada County Prosecutor's Office, Civil Division, who confirmed as Idaho Code §31-3201D is currently written, fee monies are to be spent exclusively for probation, and the county clerk cannot comply.

MOTION:

Rep. McCrostie made a motion to introduce **RS 26060**. **Motion carried by voice vote.**

RS 26039 **Rep. Kerby** explained **RS 26039** is a diversion program where an individual who has a DUI with a .08 and .20 reading can be diverted and have a contract of items to complete within six months to one year. The sentence can be dismissed upon successful contract completion. One of the requirements would be to have the ignition interlock paid for by the individual. Unsatisfactory completion of the contract would result in the case being refiled and charges reinstated. This bill requires a camera on the ignition interlock device so that friends and family cannot blow into the device for the DUI offender. Fiscally, there will be less fines paid, but counties could save approximately \$612,000 with less public defense and magistrate costs.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26039**. **Motion carried by voice vote.**

RS 26051: **Rep. Chaney** stated this bill puts **H 457** back to the way it was before it was modified in 2014. Since 2014, if someone does not wear a seat belt and someone else is negligent in injuring them, the law requires them to prove the degree to which the failure to wear the seat belt was responsible, and to prove the degree of injury in order to determine negligence. It has become an extremely litigious and expensive practice that involves experts to move court cases forward. **H 457** basically holds the negligent party responsible for all the damage they cause.

MOTION: **Rep. Cheatham** made a motion to introduce **RS 26051**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 3:22 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary