

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 22, 2023

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Foreman, Senators Lee, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**ABSENT/ EXCUSED:** Senator Anthon

**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 Lakey** called the meeting of the Senate Judiciary & Rules Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Hart** moved that the Committee accept the minutes of the February 1, 2023 meeting. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT VOTE:** **Senator Lee** moved to send the Gubernatorial Appointment of Benjamin Anderson to the State Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

**Chairman Lakey** explained that he would be taking the Gubernatorial Appointments out of order. Mr. Kirkham would be first since he was participating virtually.

**GUBERNATORIAL REAPPOINTMENT:** **Committee Consideration of the Reappointment of Commissioner Terry Kirkham** to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Kirkham** introduced himself as a longtime, 28 year servant in the Idaho Department of Corrections prior to his appointment to the Commission. During that time, he said he served as a warden, chief of probation & parole, deputy chief of probation & parole, district manager, and community work center manager.

**DISCUSSION:** **Senator Lee** asked Commissioner Kirkham how he thought the legislature could best support the Commission and if they would have any requests of the Legislature. **Commissioner Kirkham** responded by thanking the Legislature for its record of support for the Commission, particularly for financial resources that were used to purchase updated computer and information systems. As for requests, he said there were not any specific items they needed. He stressed the importance of committing ongoing resources within communities and the work of the Department of Corrections in addressing mental health and fentanyl related issues. **Senator Wintrow** asked what qualities he believed lend themselves well to service in a role on the Commission. **Mr. Kirkham** highlighted the importance of impartiality, listening, and an eagerness to help people.

**GUBERNATORIAL  
REAPPOINTMENT:**

**Committee Consideration of the Reappointment of Shelly Parker** to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Parker** said she had spent 30 years in the Ada County Prosecutor's Office Victim Witness Unit. During that time, she served as an administrator, coordinator, and pre-sentence investigator. In addition to those roles, she also did work with the National Crisis Response Team following 9/11, worked at shelters in Louisiana following Hurricane Katrina, and had served on numerous boards and committees.

**DISCUSSION:**

**Chairman Lakey** asked Commissioner Parker if she thought victims were appropriately considered in the legal process. **Commissioner Parker** stated her belief they were adequately considered and well-handled. She demonstrated her belief that she had the unique skill to, and passion for, caring for victims, and to make sure they were treated with respect, notified in a timely manner, and felt like their voices were heard. **Senator Wintrow** asked what Commissioner Parker thought was needed for someone to be successful in that role. **Commissioner Parker** claimed it required a well-rounded person, because the role had become increasingly difficult and everyone had to work well together to make sure parolees became successful. She said there was also a difficult balance to strike with regard to making sure support was delivered to parolees, but to also make sure more victims were not created. **Senator Wintrow** followed up with a question about how community reintroduction efforts could become more successful. **Commissioner Parker** said the State had several great programs in place, but areas that could have used some more improvement were focused on the identification of domestic violence and anger management issues, and more programming that could address them.

**GUBERNATORIAL  
REAPPOINTMENT:**

**Committee Consideration of the Reappointment of Scott Smith** to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Smith** said he spent over 30 years as an FBI agent, with 10 of those years overseas prior to his two years served on the Commission.

**DISCUSSION:**

**Senator Wintrow** asked what was needed for someone to successfully serve on the Commission. **Commissioner Smith** said it required an ability to find ways to collect information and address every parolee's unique circumstances, because no two would be the same. **Senator Wintrow** followed up by asking what the working dynamic was between the Commission and its Executive Director, and how the Executive Director would set them up for success. **Commissioner Smith** stated that the quarterly trainings allowed both parties to discuss and identify solutions to any potential problems as they pursued continued compliance with statutory guidelines. **Senator Hart** asked if there were any suggestions for how the Legislature could combat rising incarceration rates. **Commissioner Smith** said that, after the experiences he had overseas, it was his belief Idaho had done a fantastic job with the services and support it provided.

**RS 30382**

**Fee Advisory Committee Flexibility.** **Sarah Bettwieser**, who represented the Idaho Fire Chiefs' Association, said the RS was created so fire districts would have been able to create impact fee advisory committees to support planning efforts. Due to the complex, multi jurisdictional makeup of fire districts, **Ms. Bettwieser** said these committees would make fire district planning efforts more organized and representative of their unique districts.

**MOTION:**

**Senator Ricks** moved that **RS 30382** be sent to print. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

**S 1090**

**Partition of Heirs. David Jensen**, attorney with Parsons, Behle, & Latimer, presented **S 1090**, the Uniform Petition of Heirs Property Act. **Mr. Jensen** stated the legislation was crafted to grant more tools to heirs that were in the process of dividing inherited properties, and afforded lower-to-middle class families greater opportunities to maximize the potential of generational wealth-generating assets. He said that the legal system would only support the division of the property that would grant each heir an equal percentage over which they would gain full ownership or selling the property at a public auction, where the profits would be equally distributed. To remedy those problems, **S 1090** would grant co-tenants the ability to sell their share in the property while not forcing the others to do the same. Laws similar to this have been enacted in 22 other states, including neighbors Montana, Nevada, and Utah.

**DISCUSSION:**

**Chairman Lakey** asked if partition would occur before or after probate. **Mr. Jensen** confirmed that partition would occur post probate, since the heirs would not own the property until after the transfer was completed. **Senator Ruchti** asked Mr. Jensen how, under current law, the process would work in the event not all heirs were able to come to an agreement on what to do with the property. **Mr. Jensen** said that, in the event it was a house or something else that could not be divided into parts of ownership, that would trigger a public auction, after which the heirs would receive their shares. He continued to say that a part of what made those situations challenging was that the Courts would hold hearings to determine the property's value, often below market rate before the bidding process would begin. **Chairman Lakey** asked if Courts were equipped to weigh in at times an heir with a greater share of an asset attempted to initiate a partition-by-sale against the wishes of the other heirs. **Mr. Jensen** said the language in **S 1090** could compel heirs to come to an agreement since it could prevent an artificial advantage from being created. **Senator Lee** asked what circumstances in scenarios like that could compel heirs to come to an agreement on what should happen with their property. **Mr. Jensen** said it would be advantageous to families to have agreed to a sale so they could reap the benefits of a market rate sale, rather than risking it going to auction and selling for less. **Senator Wintrow** asked what the inspiration for these kind of laws was. **Mr. Jensen** said it was to reduce or eliminate conflict and help lower-to-middle class families hold onto or maximize their earning potential from generational assets. **Senator Wintrow** followed up by asking what the motivation was for an attorney to sponsor the bill. **Mr. Jensen** said that, while he does not practice in probate, estate planning, or anything similar, he liked the idea of helping out, and making the process less cumbersome for "the little guy". **Senator Ruchti** asked what legal representation arrangements would look like during intra-family disputes. **Mr. Jensen** said that the party that filed the petition would need their own attorney for the filing and representation, while the others would have joint or separate attorneys. **Senator Hart** asked if the bill was a product of the National Conference of State Legislators. **Mr. Jensen** said the inspiration came from the National Conference of Commissioners on Uniform State Laws (Commission). **Senator Hart** followed up and asked if those two groups were affiliated. **Mr. Jensen** confirmed they were not. **Senator Hart** again followed-up, asking if there was an umbrella organization the National Conference of Commissioners on Uniform State Laws belonged to. **Mr. Jensen** said there was not, but that each state had its own representation on the Commission, and that bills like this often were the product of their annual meetings. **Chairman Lakey** asked who represented Idaho on the Commission. **Mr. Jensen** said that, in addition to himself, Idaho was represented by Dale Higer, Mike Brassey, Bart Davis, and Rex Blackburn.

**TESTIMONY:**

**Robert Aldridge**, an attorney from Boise, said that infighting was a common occurrence during matters of inheritance, and it was at times like that where outside money would be able to come in and exacerbate the problem. He continued to say that **S 1090** was important because it would make things more fair and add clarity to existing state law. **Senator Ricks** asked if the increase in outside influence and money would negate the need for the proposed legislation. **Mr. Aldridge** said it would not because the bidding process often resulted in properties selling for less than their value. **Senator Ricks** stated that he had observed cash sales of properties at auction that would go above market value. **Senator Wintrow** then asked if those situations were a non-issue in the event estate planning was included as a provision in a will. **Mr. Aldridge** said that there may have been instances where an attorney would have made an oversight in advising their clients on those issues, and there had been an increase in complications that had resulted from people creating their own wills online. **Chairman Lakey** asked why someone that requested a partition would not be able to buy a greater share in the property and if that was something the Courts could arrange. **Mr. Aldridge** said that was not possible under current laws, and that the property had been divided among heirs or sold at public auction and that the Courts had no other authority in those scenarios. **Chairman Lakey** followed up and asked if there were options in current Statute other than auctions. **Mr. Aldridge** said that heirs were able to buy out each others shares and to partition property, but that option was often complicated due to the potential for local zoning regulations having the possibility to prevent them from doing what they wished with their share of the property. **Mr. Jensen** returned to provide some additional clarity to the Committee. He said that the power heirs had at present was to petition for a percentage share of the property or partition and sell it. He added they could, if determined that public auction or sealed bids were a better course of action for co-tenants or heirs, but that heirs coming to an agreement to sell the property on the open market was often the best solution. **Senator Wintrow** asked if the Commission had identified any drawbacks to those practices. **Mr. Jensen** said they had not observed any, and that **S 1090** would add greater flexibility and options for heirs during those challenging times. **Senator Lee** stated that she appreciated the intent, but feared that it could result in unnecessary complexity. **Senator Wintrow** noted personal experience with these issues, and that she could see the benefit to expanded options for those families. **Senator Lee** added an additional concern that the legislation could result in an increased workload for the already overburdened Courts.

**MOTION:**

**Senator Ruchti** moved to send **S 1090** to the floor with a **do pass** recommendation. **Vice Chairman Foreman** seconded the motion. The roll call vote resulted in a 4-4 tie. The motion failed. The bill was held in Committee.

**S 1092**

**Electronic Wills.** **David Jensen**, attorney with Parsons, Behle, & Latimer, presented **S 1092**, which sought to modernize the processes in which wills could be created and stored by bringing estate planning into the digital age. **Mr. Jensen** explained under current law a will was only valid in physical (i.e. paper) form. If passed, the bill would allow for the online execution of wills while preserving legal standards. He added that there would be an interstate recognition of electronic wills using digital notarizing processes, but only if the person was physically located in another state at the time of the wills creation. He concluded by saying that the content of wills would not have to comply with any special requirements and that this process would rely on technology set up in accordance with the National Notarization Act.

**DISCUSSION:**

**Chairman Lakey** asked if an electronic will's execution and treatment would be different than physical ones. **Mr. Jensen** said that, like a résumé, whether it was in digital or paper form, content was unaffected, and the requirements for establishing one would remain unchanged. **Senator Ricks** asked where electronic wills would be housed. **Mr. Jensen** said that it would depend on what group created the will, but that a notary would have record of its creation, and those that create electronic wills would have the ability to also have physical, backup copies made. **Senator Ricks** followed up by asking if someone were to pass and the last copy of their electronic will was kept in a place nobody could access what would happen. **Mr. Jensen** likened that scenario to that of an instance where a paper will was lost, and that it was the responsibility of the creator to let family know how to find it. **Senator Hart** asked if there was an online database where digital wills could be stored. **Mr. Jensen** confirmed his understanding that was the case. **Senator Hart** followed up by asking how one could find evidence of digital wills having been tampered with. **Mr. Jensen** said that you would likely need to check with the notary if they would have the ability to identify evidence of tampering from the original version they notarized previously. **Senator Hart** responded with an inquiry about how the digital notarization process worked. **Mr. Jensen** said that notaries would have an online authorization system that had to be approved by the Secretary of State that would affix the personal notarization stamp to the document(s). **Senator Lee** asked if that process would be similar to homebuying, which, post-COVID, was something that could be done almost fully remote using services like DocuSign. **Mr. Jensen** confirmed the process would look similar, with the addition that the process would be more enhanced, since there was the additional requirement of affixing signatures from witnesses, added security features, and having a digital record created. **Senator Wintrow** asked if witnesses signing those documents digitally had to be done at the same time or if it could happen separately. **Mr. Jensen** said he believed it could happen at the same time. **Senator Ricks** stated that he had concerns about the potential for a select few companies that specialized in those digital services to greatly benefit from the legislation, but that he would still support its passage. He also cautioned that this process could change in the future to include a subscription model.

**TESTIMONY:**

**Robert Aldridge**, an attorney from Boise, noted there was a committee that was created to review modernization processes like this. He noted that a lot of services had transitioned to fully-digital platforms, and that he would personally advise clients to maintain digital copies on hard drives or thumb drives so there was a backup in the event the primary copy was lost, corrupted, or even tampered with. He continued to say that **S 1092** would have retroactive application to 2020. **Mr. Aldridge** concluded his testimony by saying that 10 states had already enacted similar legislation and the list had been growing. **Francoise Cleveland**, Associate State Director of Advocacy for AARP Idaho, indicated her organization's support for **S 1092**, stating that it would offer an important legal tool for home-bound or mobility-impaired persons by allowing them greater access to creating wills. She said that this legislation was especially needed because a 2021 study found a 27 percent decrease in estate planning documents made by people 55 and older between 2019 and 2021.

**MOTION:**

**Senator Wintrow** moved to send **S 1092** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

**S 1105**

**Sex Offender Registry**

**S 1086**

**Tort Claims, Government Entities**

**S 1105** and **S 1086** were held in Committee due to a lack of time.

**ADJOURNED:**

There being no further business, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary

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Kieran Sprague  
Assistant Secretary