

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 17, 2021

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

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

**PRESENTATION:** **Presentation of Status of the Department of Corrections (IDOC).** **Josh Tewalt**, Director, Idaho Department of Corrections, stated that on March 1, 2020, the IDOC was experiencing record growth. He also gave statistics reflecting the decline in prison population and the growth in number of individuals on felony supervision approximately one year later. The Covid-19 pandemic has disrupted jury trials significantly, but it has not stopped the IDOC from receiving newly incarcerated individuals. When jury trials resume, IDOC anticipates an uptick in people being placed in IDOC programs. The IDOC has continued to facilitate keeping programs moving throughout their system. The hard work of many people employed by the IDOC has allowed their system to keep flowing, and the investments the Legislature made last year are starting to pay off.

**Director Tewalt** explained that one of the IDOC's main focuses is the principle that the community is safer when former inmates find subsequent success in the community. Today there is a complete reorientation of how the program is approached. In the past, the goal was to penalize every reoffense. The current program focuses on finding what it takes to make each individual successful and ways to make that happen. Historically, the IDOC spent over five times as much on prisons as on community resources. In the last year that trend has changed.

**Director Tewalt** stated that the IDOC is currently using three community-based strategic initiatives. One of those initiatives is Connection & Intervention Stations. The background on this is the realization that high risk offenders need individualized case management to assess their unique risks. High-risk offenders need to be connected to people who can help them find the resources they need to get on a more positive trajectory and learn to be more accountable for their actions.

Another strategic initiative, Dosage Probation, determines the amount of individualized programming specific to a person's need that gives the most beneficial results. Boise State University (BSU) is evaluating a Dosage Probation model, and they will have a control group that can be compared to the traditional supervision model.

The third Initiative is Reentry Grants. The grants are divided into three categories including crisis services, forensic peers, and trauma services. Partnerships with other groups operating in these areas have been formed and the IDOC is anxious to see how they will be most effective in working with incarcerated individuals. This area seeks to provide an understanding of root causes which have contributed to inmates circumstances. A new emphasis has been placed on females entering the corrections system. An Adverse Childhood Experience Study has been used with the female IDOC population. The goal of the study is to help address underlying trauma which will allow better impacts on precursors to crime in the community. In addition to the Reentry Grants, the IDOC is working on a pilot program relating to the challenges of finding suitable transitional housing.

**Director Tewalt** said that his department is dedicated to ensuring that reentry starts on the first day they enter the prison system. This goal has prompted IDOC to ensure that the programs offered are purpose-driven. They are intended to help ease the transition back into the community and to have added impact on public safety.

**DISCUSSION:** **Senator Burgoyne** asked what the recidivism rate was for the IDOC. **Director Tewalt** stated that the numbers may be very misleading because they need context. Idaho defines the type of crime at the time of arrest and the time of conviction differently.

**Director Tewalt** said that roughly three-quarters of new term commitments were people who had failed other opportunities to be successful in the community and roughly two-thirds of the existing prison population were there because they failed on supervision. **Senator Burgoyne** expressed that he feels like all the efforts of the Legislature and the IDOC are not making a difference. **Director Tewalt** responded that while the IDOC was not the decision-maker in areas such as sentencing and releases, they did have the ability to influence the confidence level of those who do. Results of the intervention stations were being realized and discussions with the Judiciary were changing the perceptions of those organizations.

**Senator Lee** indicated that she was concerned about the court trials that have stopped due to Covid 19. Jury trials should be opening up, and she questioned whether everyone will be prepared to handle a large increase in trials, sentencing and an increase in the prison population. **Director Tewalt** stated that since the pandemic began, law enforcement has taken a different view of imminent public safety. They believe that if crime rates drop or stay flat during the pandemic, why should they increase after the pandemic. He stated that the expected increase in new crime has not risen, and he added they feel confident they will be able to handle the inmates when sentencing resumes.

**Senator Wintrow** asked how the Legislature could help support IDOC with community connections. **Director Tewalt** shared the steps taken to make the community connections. He explained that the first step the IDOC took was to find subject matter expertise. The department identified a challenge they saw, provided pertinent information and contacted the appropriate organization and asked for recommendations on how to solve the problem. The IDOC worked with organizations who were research based and could help them achieve the desired outcomes. The community connections main purpose is not to provide the service, but to connect the IDOC to those who are experts in the needed areas. **Director Tewalt** added that it is the responsibility of the IDOC to measure results of their programs and bring the results to the Legislature.

**Senator Lodge** and **Chairman Lakey** thanked Director Tewalt and his staff for their work and the great progress the IDOC has made.

**RS 28576**            **Relating to Incorrect Label as "Phantom Insurance."** **Senator Jim Guthrie** stated that **RS 28576** deals with uninsured and underinsured motorist coverage. It provides that any underinsured motor vehicle coverage with limits of liability less than two times the Idaho minimum limits for bodily injury or death shall be construed to provide coverage in excess of the liability coverage of any underinsured motor vehicle involved in the accident. He requested the Committee send the legislation to print and then be referred to the Commerce and Human Resources Committee.

**MOTION:**            **Senator Lee** moved to send **RS 28576** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**      Chairman Lakey passed the gavel to Senator Lodge who was serving as Vice Chairman in Vice Chairman Ricks' absence.

**RS 28588**            **Relating to Commercial Burglary.** **Chairman Lakey** explained that **RS 28588** is a correction to SB 1352 passed in the 2020 Legislature. Commercial burglary was defined as burglaries committed in stores during business hours involving theft of property worth less than \$300.00 and was a felony. The 2020 legislation provided for a misdemeanor offense if it met the mentioned criteria. There was misinterpretation by some courts that the 2020 bill may have excluded burglaries outside of the current statute from commercial locations. This RS changes the language to address that misinterpretation but does not change the original intent.

**MOTION:**            **Senator Burgoyne** moved to send **RS 28588** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**RS 28613**            **Relating to Financial Institution Garnishment Fees.** **Trent Wright**, CEO and President, Idaho Bankers Association, stated that **RS 28613** proposes a fee increase of \$5 to \$7 for execution fees and an increase of \$10 to \$12 for the one-time search fees. It seeks to clarify lookback procedures to match federal guidelines. Lookback refers to how far back in time you would look at someone's banking, checking or savings accounts for either wages or assets. This legislation would provide the judgement creditor with the 30-day provision to accept the answer of the garnishee for insufficient funds.

**MOTION:**            **Senator Anthon** moved to send **RS 28613** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**      Senator Lodge passed the gavel to Chairman Lakey.

**S 1078**              **Relating to Death Certificates.** **Randy Lofgran**, Extern, College of Law, University of Idaho, stated this legislation provides that a death certificate may be included in the list of instruments to be recorded on county property records and clarifies the discretion of the county recorders in determining which type of documents are received. He stated **S 1078** would not create liability for the county clerk. Death certificates need to be filed in the county records to clarify property ownership. A recorded death certificate may be used in the administration and distribution of trust assets. The clarification provided in this legislation will align the statute with existing court instructions.

**MOTION:**            **Senator Burgoyne** moved to send **S 1078** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**S 1088**

**Relating to the Rental Fees.** **Senator Ali Rabe** explained that **S 1088** would require that rental fees be enumerated in lease agreements or other written agreements between landlords and tenants and the fees be reasonable. The proposed changes to code reflect industry best practices and also State best practices. The changes will prevent landlords from imposing overly burdensome, punitive late fees on renters who are already struggling to make ends meet. **Senator Rabe** commented these fees are sometimes used in an exploitative way to punish tenants who are struggling.

**Senator Rabe** pointed out that housing costs in Idaho are outpacing any other state. Renters are at the mercy of the landlords and the housing demand far outweighs the supply, especially for affordable housing. With more population growth, more tenant/landlord disputes occur. This change to current code would ensure that tenants can pay their rent, and stay in their housing without trying to make up for fees about which they may not have known.

**DISCUSSION:**

**Senator Anthon** asked how one measures "reasonableness" when an agreement is disputed. **Senator Rabe** stated that it is a common term used in courts all over the country signifying an agreement is appropriate, fair or sensible. Also the term is consistent with Idaho Code. **Senator Anthon** expressed concern that this legislation could alter the principle of the statute of frauds in Idaho law. **Senator Rabe** responded that **S 1088** does not require that lease agreements be a year long. It only requires that the agreement be written down, and that is currently in line with another part of the landlord tenant code. She added that the legislation does not require all lease agreements be in writing. The bill only requires that fees are written down in a separate agreement.

**Senator Wintrow** asked the range of fees in the Treasure Valley and what purpose they serve. **Senator Rabe** stated there are late fees of up to \$100 per day. Late fees are meant to be an incentive for rent to be paid on time. Research shows that beyond one small fee, no additional incentive is derived.

**TESTIMONY:**

The following people testified In Support of **S 1088**:

Doug Taylor, representing the Idaho Apartment Association, Boise, Idaho

Cassandra Swanson, CEO, Paramount Property Management, Boise

Reverend Sara LaWall, Minister, representing Interfaith Equality Coalition, Boise

Kendra Knighten, Policy Associate, Idaho Voices for Children, Boise

Betsy Carver, Landlord, Boise

Margie Baker, Effective Activision Idaho (EAI), Nampa, Idaho

**Senator Rabe** said she felt the concerns with "reasonable" would be handled by the courts.

**MOTION:**

**Senator Wintrow** moved to send **RS 1088** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion.

**SUBSTITUTE MOTION:**

**Senator Anthon** moved that **RS 1088** be sent to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion.

**DISCUSSION:**

**Senator Anthon** stated his reasons for making the substitute motion. He indicated that he was concerned the bill may cause confusion in terms of the statute of fraud definition, and he also identified some drafting errors that need to be addressed. He said he could see a problem with the State telling landlords what they could or could not do with their own property. **Senator Lee** seconded the substitute motion.

**MOTION:**

The motion to send **S 1088** to the 14th Order of Business for possible amendment passed by **voice vote**.

**S 1089** **Relating to Spousal Rape.** **Senator Wintrow** stated that **S 1089** is a housekeeping bill which repeals the entirety of Idaho Code § 60-107. Since Idaho recognizes that 16 and 17-year-olds can be legally married, she addressed that in the bill. She indicated that recognizing lawful marriage should also be in subsection 1, and requested that it be sent to the 14th Order of Business to be corrected. **Senator Wintrow** gave a brief history of the spousal rape bill and the dates changes were made. She commented that the world has changed and the current spousal rape provision would not be used.

**MOTION:** **Senator Anthon** moved to send **S 1089** to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**PAGE GRADUATION:** **Senator Lakey** thanked Sophia Lind for her service to the Committee. **Ms. Lind** shared her experience of recently singing "How Great Thou Art" in the Capitol Rotunda for Legislators and staff, and the spirit of peace that she felt there. She said that experience summed up her time as a page with the feeling that what is done in the Capitol is special and right. She stated that she has had an amazing six weeks at the Idaho State Capitol. The things she learned, the people she met, and the relationships she formed will be an unforgettable part of her life.

**ADJOURNMENT:** There being no further business at this time, Chairman Lakey adjourned the meeting at 3:20 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary