

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 24, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Potts, Burgoyne, Nye

ABSENT/ EXCUSED: Senator Foreman was excused

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 1:33 P.M..

GUBERNATORIAL APPOINTMENT HEARING **Honorable Darrell Bolz** presented before the Committee. **Mr. Bolz** commented that it was his desire to continue the work on the Idaho Public Defense Commission (IPDC) as he has done for the past eight years. He noted that the Commission had many goals to accomplish. He explained his background and experience. He added that once he retired from his professional employment he decided to run for the Legislature in 2000. He noted he was elected serving seven terms in the House of the Representatives. He remarked that some of his legislative endeavours while in the House of Representatives had impacted the IPDC.

Mr. Bolz commented on being on the Joint Finance-Appropriations Committee (JFAC) where he learned most about government. He recalled one of the challenges was the State's criminal justice activities. He noted his involvement and passion for learning everything about the criminal justice agencies in the State of Idaho. He elaborated on his experience on JFAC leading to further appointments within the IPDC, and the Idaho Juvenile Justice Commission (IJJC).

Mr. Bolz recalled, how at that time, he became knowledgeable about public defense system in the State of Idaho and the problems it confronted. He noted being part of the idea how a committee was born to study public defense at that time. He noted carrying that legislation forward. He recalled working with Senator Lakey. He noted his membership with the IJJC since 2004. He acclaimed the overall achievements of the IPDC. He concluded noting the various problems and suggestions of how public defense should be facilitated.

Chairman Lodge praised Mr. Bolz for his valuable contributions and service to any committee and the IPDC. **Senator Hagedorn** praised Mr. Bolz and the input he continually delivers to the tasks before him. He asked regarding which area of priority needed to take precedence. **Mr. Bolz** responded specifically that incarceration was not the answer for the crisis the State confronted. He believed there are issues which should be reviewed for the incarcerated population specifically those with the mental health problems. He noted the State needed to create a mental health facility and focus on those efforts. He noted that individuals facing incarceration needed to be helped, rather than, incarcerated and those decisions needed to be reexamined.

Senator Lakey praised and thanked Mr. Bolz. He asked regarding continued work regarding Idaho standards which recognized how things are facilitated within the State. **Mr. Bolz** elaborated that state standards were incorporated utilizing some of the federal standards. He noted that the decision was made that the federal standards were not satisfactory for the State of Idaho causing them to be eliminated at that point in time. He commented that presently a study was performed and results are expected in the near future.

Senator Burgoyne thanked and praised Mr. Bolz. He asked regarding structural and financial creation of the IPDC. **Mr. Bolz** explained that the CPP is presently structurally sound with the hiring of the three regional coordinators. He elaborated that the structure is closely tied to the financial aspect. He noted that each counties' justice system is critical. He noted that once standards are effectuated counties may see some relief in this area.

Mr. Bolz commented on the financial aspect of public defense and the need for appropriate funding. He noted the taxes collected by the counties originate from property collection which begs the question if property owners should be burdened with the cost of public defense. He elaborated on the taxation component if everyone should be included. He noted the importance of reviewing this area of taxes.

Mr. Bolz praised Senator Lakey for the work done on the grants to the counties. He noted that funding will be essential going forward. He concluded by thanking the Committee.

RS 25621

Regarding Amending Current Language for Commission of Pardons and Parole's Role in Making of Treaty Transfers Decisions of Foreign Offenders presented by **Sandy Jones**, Executive Director of the Commission for Pardons and Parole (CPP). **Director Jones** explained how this legislation originated and how it was delegated internally to the CPP. She noted the practice to manage these transfer requests has been under the purview of the CPP in the past. She commented how infrequently this occurs and explained how foreign nationals may seek to serve out their sentences in their country of origin. She noted the steps involved in facilitating the requests in particular working with the United States Department of Justice (DOJ).

DISCUSSION:

Senator Hagedorn inquired whether the practice of transferring of foreign offenders was the way to proceed. **Director Jones** deferred to the logic of where the bill originated with the Office of the Governor. She noted that this practice can be viewed as commutation of a sentence with the CPP. She added that, alternatively, it can be an inmate housing option which would fall under the purview of the Idaho Department of Correction (IDOC). She explained that the CPP already makes these decisions daily and this would only continue the practice.

Senator Lakey asked how prisoners are tracked once they are transferred to the country of their origin. **Director Jones** responded that there was no evidence to determine this due to few requests being granted. She noted there is no protocol for tracking currently established. She elaborated that in order for a prisoner to be eligible there has to be a certain portion of the sentence served within two years of parole eligibility requirement. She noted the country of transfer has to be a member of the National Transfer Treaty. She added that various crimes which the United States incarcerates for are not considered crimes in the country of transfer. She noted the details fall under the purview of

the DOJ.

Senator Potts asked whether the statute was followed. **Director Jones** replied it was not. She noted the inter-agency Memorandum of Understanding (MOU) expired and a decision was made to more appropriately address the legislation in statute. **Senator Potts** asked, if the Committee was to reject this RS, would it then be appropriate for CPP to follow the statute. **Director Jones** responded the deferment would be made to the IDOC. She noted the Attorney General is tasked with research regarding the statute and there are no cost ramifications from this legislation. **Senator Potts** remarked on the irony of the original statute not being followed and thanked the director for her clarifications. **Director Jones** added that when the CPP found to be operating under the expired MOU it was not an intentional disregard of the statute.

Senator Burgoyne commented that bulk of the work was "conforming the statute to practice" anecdote and noted that the legislation may need clarification. He stated that the statute, as written, may only not pertain to prisoners but also to those on parole. **Senator Burgoyne** asked as to what factors affected commutation decisions. **Director Jones** responded that the CPP reviews factors where the prisoner may be most likely to be successfully rehabilitated concerning his/hers country of origin. She noted that in most cases the offender is rooted in the way of life in the United States as well as having family here. She noted there were no parolees who have applied for the transfer. **Senator Burgoyne** commented regarding learning about the treaty, specifically as to which location is more suitable for rehabilitation.

MOTION:

Senator Hagedorn moved to send **RS 25621** to print. **Senator Lakey** seconded. The motion passed by **voice vote**.

**DOCKET NO.
50-0101-1701**

Rules of the Commission of Pardons and Parole, by Sandy Jones Executive Director of the Commission on Pardons and Parole (CPP) presented this docket. **Director Jones** provided an overview of the changes with regard to the definitions that were clarified in parole violations, hearings and reconsiderations of parole.

Vice Chairman Lee asked Director Jones to proceed with docket review.

Director Jones reviewed each of the amended definitions in Section 010 regarding firearm rights restorations, members of CPP, inclusive gender efforts, revocation hearing, preliminary hearing, self-initiated parole reconsideration (SIPR), and supervising authority. She called attention to the language clarifications that were initiated to define the rule more adequately. She noted in Section 010.01 regarding deliberations how the new language needed to be added for the purposes of adjustment with last year statutory changes.

DISCUSSION:

Senator Hagedorn asked regarding storage of digital data. **Director Jones** responded that data is stored on a back-up server in a laser fiche storage center. **Senator Hagedorn** expressed content that there is a back-up data storage.

Director Jones remarked on changes to Subsection 104.01 for the recordings of hearings and business meetings and the recording of minutes. She noted, that when a parolee is present, measures are taken to record all sessions. She noted new language added in Subsection 104.08 regarding structure of the CPP and how it operates with respect to parole decisions.

Senator Burgoyne asked regarding Subparagraph 104.08.i-ii regarding what happens to parole violators while waiting for CPP quarterly meetings. **Director**

Jones responded that if CPP did not unanimously agree then the parolee would stay in custody during that time. She noted the CPP also has the ability to call a special meeting to handle the parolee without waiting for the quarterly meeting.

Director Jones continued with clarification changes to Subsection 104.08 and 104.09 which added new language. She proceeded to clarify section 250.01-03 with added language clarifying scope of parole hearings. She noted the changes to institutional and medical parole section. She noted the CPP added Idaho Code citations to Paragraph 250.05.c and 250.06.iii. She addressed changes to Section 300 regarding process for victims of criminal offenses. She remarked on language clarifications in Section 350 regarding parole and release procedures.

Director Jones addressed clarification to describe due process was made in Subsection 400.03 and 400.05 specifically steps taken for parole violators. She noted changes to Subsection 400.07 regarding violations and revocations of hearings.

Senator Anthon asked regarding parole violation hearings as part of due process to confront adverse witnesses and if, in such a setting, parolees are represented by attorneys. **Director Jones** responded that this occurs frequently, however, the attorney does not get a chance to cross-examine the adverse witness, but can question the parole officer present. **Senator Anthon** asked if the State has counsel present to facilitate the direct examination. **Director Jones** responded that the State does not have attorneys present.

Director Jones continued with changes to Subsection 400.09 regarding competency to assist in defense. She explained the types of evaluation if necessary. She noted the hearing officers may recommend successful completion or alternative option to revocation. **Director Jones** reviewed Section 450 regarding commutation of sentences. She noted the various language added to commutation hearing in Subsection 450.02. **Chairman Lodge** inquired regarding Paragraph 450.02.a for a notice of hearing needing to be published in a newspaper of general circulation and the costs associated with postings. **Director Jones** responded that typically hearings are published in a group and not per individual hearing.

Director Jones continued with Section 550 regarding pardons and additional language added. She noted the specific pardons exceptions which apply within code. She added that the scope of the section regarding pardons and the section on restoration of firearm rights overlap.

Senator Hagedorn inquired regarding notice posting in a local newspaper publication. **Director Jones** responded the CPP used the *Idaho Statesman* newspaper. **Senator Hagedorn** followed up noting how a resident of Shoshone would be notified and remarked on the intent of the rule. **Director Jones** responded asking her paralegal, Mary Sheeler.

Ms. Sheeler was welcomed by **Vice Chairman Lee**. She introduced herself to be the paralegal for CPP. She noted the open meeting statute in Idaho Code § 20-213 covers the general circulation requirement. She noted the *Idaho Statesman* newspaper is the preferred choice publication with the notice posted for four weeks.

Senator Hagedorn recommended that individuals in distant areas may not receive the publication and the rule may need to be reviewed. **Vice Chairman Lee** added that same statute may be looked at and applied in a different way.

Senator Anthon remarked on the notification needed to be posted in the geographical location that it affects. He noted the term of "general circulation" does not provide effective notice. **Chairman Lodge** noted other local news publications that were used to publish and presently there are better ways to get the information out.

Director Jones continued regarding applicants appearances at hearings, voting records and written materials considered in decision process. She noted the CPP added a remission of fine or penalty noting the intent to make the rules uniform.

Vice Chairman Lee asked for clarification between the difference of the firearm restoration as far as the executive session and recording of the votes. **Director Jones** noted there is a difference between parole and revocation proceedings and when the full board meets to consider these types of hearings which are pardon, commutation and firearm restoration. She noted the smaller panel cannot arbitrate these meetings. **Director Jones** noted changes in Section 800 on Foreign National Treaty transfers.

Senator Lakey recalled if transfer occurs within two years of seeking parole eligibility and noted that the rule in Paragraph 800.01.d specified it could not occur less than two years from eligibility date. **Director Jones** concluded review of **Docket No. 50-0101-1701**.

Vice Chairman Lee inquired if public comments were received regarding these changes. **Director Jones** confirmed that no comments were received even though the rule was posted and open meetings were held for public comment. **Vice Chairman Lee** asked regarding opposition to the Pending Rule. **Director Jones** denied any.

Chairman Lodge noted on the wording of the Section 101 regarding hearings and the wording which should be revised.

Chairman Lodge inquired on the frequency of hearing dates. **Director Jones** responded that hearings are scheduled monthly for two weeks and the CPP schedules them around the holidays. She noted the quarterly hearings are specific to commutations, firearm restoration rights, and pardons. She noted the CPP is working with video technology to be able to stream the hearings from the various facilities.

MOTION:

Senator Hagedorn moved to approve **Docket No. 50-0101-1701**. **Senator Burgoyne** seconded. The motion passed by **voice vote**.

Chairman Lodge advised members of upcoming Committee meeting.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:50 P.M.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary