

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 15, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

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

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 and Rules Committee (Committee) to order at 1:35 p.m.

H 150 **Relating to the Idaho Commission of Pardons and Parole (Commission).** **Representative Caroline Nilsson Troy**, District 5, explained that approximately ten years ago, the Commission became a separate agency from the State Board of Correction (Board). The change was made to ensure there would be no undue influence on the Commission for the release of inmates who might compromise public safety. Since that time, the statutes for pardons and parole are scattered throughout the Department of Corrections. The Commission determined putting all the statutes together in one chapter would make it much easier to understand and use.

DISCUSSION: **Senator Wintrow** asked if Representative Troy would explain the substantive changes being made. **Representative Troy** enumerated them. Section 1 clarifies the Commission and the Board are two separate entities. The Board has no supervisory role over the Commission. Section 2 creates a new chapter combining everything. Section 3 creates the commissions, appointments, and compensations. Section 4 contains new language about open-meeting requirements and the authorization of specific executive sessions. It allows the executive director to designate a staff person to be physically present when a pardon or parole hearing is held. Section 5 clarifies the Commission's rulemaking authority. Section 6 moves a section on legislative intent and a report requirement to two sections in Chapter 10. Section 7 removes obsolete language from rules governing parole and legislative intent. Section 13 protects the Commission employees from personal liability stemming from injuries caused by a parolee after their release. Sections 14, 15, and 16 add to the section and removes obsolete language. Section 17 ensures that the Constitutional provisions are followed. Section 18 relates to commutations and pardons. Section 19 is part of a new chapter and removes obsolete language. It establishes the notice requirements for inmates who get a hearing for a pardon or commutation. Section 20 contains the language added in legislation last year. Sections 21 through 26 are minor technical corrections.

Ashley Dowell, Executive Director, Idaho Commission on Pardons and Parole, thanked Representative Troy for her work on **H 150** and explained how difficult it was to sort through the statutes looking for the ones that applied to the Commission.

Chairman Lakey asked why the language relating to reasonable payment for technical and professional advisors and consultants was deleted. **Director Dowell** indicated that it is unnecessary language. The Commission may obtain whatever services it requires to accomplish their responsibilities. **Chairman Lakey** asked where to find notice requirement language for inmates granted a hearing for pardon or commutation. **Director Dowell** said that the Constitution establishes the notice requirement.

Jared Larsen, Criminal Justice Policy Advisor for the Governor, expressed the Governor's support for **H 150**. He gave a brief history of the Idaho Commission on Pardons and Parole, and the nearly 70 years of statutes accumulated over that time. **Mr. Larsen** concurred with Director Dowell that most of the changes would remove archaic language and streamline the remaining statutes. He stated that one of the Governor's principles is to foster confidence in State government. If the public cannot access and understand the rules for parole and the accompanying process, they are not going to have that confidence. **Mr. Larsen** added that the legislative intent is intact.

MOTION: **Senator Ricks** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 152 **Relating to Security Deposits. Representative Troy** explained that she had worked with a property management company who fled the state with all the deposit funds, and that experience prompted her to propose this Legislation. **H 152** requires property management companies to set up a separate bank account for rental security deposits. The bill applies only to property management companies who are managing other people's properties. **Representative Troy** stated that traditionally a lease is made out in the name of the tenant and the property owner, making it an agreement on the owner's behalf. This is done to ensure that the lease can be transferable if there's a sale of the property or a termination of the management services. **Representative Troy** said the agreement obligates the owner to the terms of the lease including the value of any security deposit funds held on the tenant's behalf. The reason for having a separate bank account is that the deposits belong to either the tenant or the landlord. They never belong to the property management company.

DISCUSSION: **Chairman Lakey** questioned if the account Representative Troy referred to was a trust account. **Representative Troy** clarified that it is not a trust account, just a separate account to keep the funds from commingling. The account could be used for accounting purposes and would create a money trail if needed.

MOTION: **Senator Burgoyne** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 246 **Relating to Domestic Relations Involving Parental Rights in Extreme Emergencies. Representative Sage Dixon**, District 1, explained public concerns were expressed during the COVID-19 pandemic when the Governor suspended some of the rules under his purview relating to parental rights. Some parents said they felt that Child Protective Services would be able to come into homes and remove their children. This legislation addresses those issues and lists many circumstances which, by themselves, would not be considered a compelling government interest that would allow parental rights to be bridged. **H 246** lists different situations where other additions include language that would prevent any suspension of an existing order or if there was another emergency declaration, this bill would not suspend it or create a new one by itself. The bill does not limit first responders from entering a home to save a child's life in an emergency situation. The addition of the term "extreme peril" creates questions about what actually constitutes extreme peril.

DISCUSSION: **Senator Burgoyne** asked for clarification that any governmental authority ordering a community evacuation cannot override a parental decision. **Representative Dixon** responded that was his understanding of the law. He stated that the courts agreed that the order does not change the balance or approach in a child custody or protection case. **Chairman Lakey** asked if this order specifically references the government or covers declarations issued by other governmental bodies. **Representative Dixon** responded that he assumes it would not be limited to just the Governor.

Senator Wintrow expressed concern that clarity is needed whether **H 246** would interfere with a valid child protection issue and how "extreme peril" would be viewed in reference to the child protection issue. **Representative Dixon** stated he used "extreme peril" because it is used in child protection statutes. He indicated that if there was a case of child abuse in which the government needed to intervene in the best interests of the child, that it would not be forbidden.

Senator Lee asked if the proposed language would imply that a governmental agency could not isolate or quarantine a child. **Representative Dixon** explained that this legislation would protect the rights of parents in an emergency similar to the pandemic. It would not allow Child Protective Services to override parental rights.

Chairman Lakey, Senators Burgoyne and Lee, and Representative Dixon had a lengthy discussion of the definition of "compelling government interest."

MOTION: **Senator Zito** moved to send **H 246** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Wintrow** stated she feels the language in **H 246** is too vague and the potential conflict with the definition of "extreme peril" jeopardizes the safety of children.

Senator Burgoyne indicated he would vote against **H 246**.

SUBSTITUTE MOTION: **Senator Lee** moved that **H 246** be sent to the **14th Order of Business** for possible amendment. **Senator Lodge** seconded the motion.

DISCUSSION: **Senator Lee** said she feels **H 246** is important legislation and necessary for uncertain times. She recommended working together with the stakeholders to fix the "extreme peril" language. She suggested the intersection between parental rights and children's rights is clear in this legislation. **Chairman Lakey** and **Senator Burgoyne** also supported the substitute motion.

SUBSTITUTE MOTION VOTE: The motion carried by **voice vote**. **Senator Zito** requested that she be recorded as voting **nay**.

Chairman Lakey announced that **H 193** will be heard on Wednesday, March 17.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:25 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary