**Backgrounder**

**Senate Law and Justice Committee’s report on the investigation of the Department of Corrections early-release debacle**

*The Senate Law and Justice Committee’s report on the early release of prisoners by the Department of Corrections is the first comprehensive account of the factors that led to the problem*

**History:**

The early release of some 3,000 prisoners by the Department of Corrections has been the focus of scrutiny since the debacle was made public on Dec. 22, 2015. Although the governor promised an investigation and subsequent report, to be produced by attorneys hired by his office, the Legislature, led by the Senate Law and Justice Committee, recognized the need for an independent inquiry. With bipartisan approval, the Senate hired the Davis Wright Tremaine law firm to review documents, assist with hearing preparation and conduct interviews with witnesses. The Senate Law and Justice Committee was responsible for production of a final report. At a hearing before the committee Feb. 10, lead attorney Mark Bartlett outlined the role his firm was to play:

*“We were not engaged to do an independent internal investigation. Instead we were engaged to assist the Senate as the Senate conducts its oversight hearings with regard to what happened at the Department of Corrections.”*

The parallel investigations were informed by the knowledge that at least two people are likely dead as a result of the early releases. Two former inmates await trial on charges of vehicular homicide and murder, crimes that took place when they should have been behind bars. Other crimes also were committed by improperly released inmates, and the state’s potential liability for negligent supervision claims is immense. One victim’s family already has filed a claim for $5 million.

Although some criticized the Senate’s decision to conduct an independent investigation and urged that the governor’s investigation be given primacy, the Senate investigation was considerably different in focus and process. It took great care to ensure the comprehensiveness of its inquiry, the transparency of its process, and the accuracy of its evidence-gathering. Witnesses provided statements to investigators, which they were allowed to review and edit and review before signing; 13 witnesses offered testimony before the committee, under oath, in public session; DOC employees were asked for their input, and all documents and employee emails were released to the press for their review.

The Senate discovered that the report the governor issued Feb. 25 was far from comprehensive, had significant holes in the narrative, mischaracterized witness testimony and disproportionately placed blame on the shoulders of mid-level managers, while largely absolving executive staff from culpability, former Secretary Bernie Warner in particular.

The Senate report details a problem that started in 2003, when the Supreme Court issued a decision regarding the calculation of “good time” for prisoners who have flat-time sentence “enhancements” for armed crimes and sexual violence. The problem was that DOC programmed its computers incorrectly. It wasn’t discovered until 2012, when the father of a victim whose assailant was released early hand-calculated the correct release date and informed DOC of the error.

Mid-level managers followed agency procedures in an attempt to fix the problem, notifying supervisors and following the chain of command in doing so. The Attorney General’s office was contacted for legal advice, and an assistant attorney general suggested the agency could continue releasing prisoners early while it waited for a computer fix. But DOC executives failed to take responsibility. They did not review the advice critically and recognize the potential for disaster. And then, for a variety of reasons having to do with agency priorities and mismanagement of IT programs, the fix was postponed 16 times. The problem was largely ignored, treated as a routine matter, and prisoners were released early for another three years.

**The governor’s report:**

The governor’s investigators reviewed many of the same documents and interviewed the same witnesses, but they focused on the narrow question of who at DOC knew about the early-release issue. They did not examine the broader responsibility of DOC executives for their agency, nor did they consider the responsibility of the governor’s office to provide oversight. Witness after witness told the Senate Law and Justice Committee that the governor’s report did not accurately reflect their statements. Because the governor’s investigators did not provide the notes they made as they interviewed each subject, there was no way to check their work. Several witnesses thanked the Senate for the way its investigation was conducted.

When the governor issued his report Feb. 25, he called it comprehensive, and said that while investigators had failed to review 16,000 documents at the time of its release, he didn’t expect anything in those documents to alter their findings. The governor’s office issued two supplemental reports March 7, with the narrow purpose of attempting to refute claims of inaccuracy.

**Notable flaws in the governor’s report:**

* Downplays the effect of an upper-management decision to downgrade the priority status of a fix to the computer error at the center of the problem
* Makes conclusions that are disputed by witnesses who have testified before the Senate.
* Blames middle managers for the delay of the software fix, in particular David Dunnington, who stated under oath that the governor’s report mischaracterized his statement and was inaccurate. This was supported by former corrections secretary Dan Pacholke in his testimony:
  + *“There has been a lot of discussion or relevance placed in the report on the fact that he [Dunnington] downgraded the priority of this IT fix. Well, he can show you in writing where he was directed to downgrade all enhancements to a Level 3 by a Deputy CIO. So he was complying with a directive given to him in writing. He didn’t make that decision independently. That’s one example. And he certainly has other material to suggest there were other areas like that – where he was, for the most part, following directives that were given him by more senior staff.” – Bernie Warner*
* Downplays the role of Bernie Warner, corrections secretary during most of Inslee’s term. In particular, the governor’s report says no one interviewed by the governor’s investigators suggested Warner’s management style and decisions were contributing factors. This point is disputed by the following:
  + **Kit Bail, former chief information officer**, said Warner’s management style and overemphasis on the “Strong R/Advance Corrections” project caused top IT officials to quit. She stated she told this to the governor’s investigators.
  + **Denise Doty, former assistant secretary**, said Warner’s decisions reordered the priorities of the IT department and created the climate where mistakes could occur. She said she had spoken at length about this with the governor’s investigators.
  + **Dan Pacholke, former secretary of corrections**, said Warner “set the context” in which the error occurred.

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