

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 31, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

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

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 Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:33 P.M.

APPROVAL OF MINUTES: **Senator Hagedorn** moved to approve Minutes for January 15th, 2018. **Senator Burgoyne** seconded. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE : **Senator Lakey** moved to send the gubernatorial appointment of **Darrell Bolz** to the Idaho Public Defense Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Hagedorn** seconded. The motion carried by **voice vote**.

PRESENTATION: **State Appellate Public Defender's Office Overview** by Eric Fredericksen, Director of the State Appellate Public Defender's Office (SAPD). **Director Fredericksen** elaborated on the statement of purpose of the SAPD which guides the relief to the counties. He noted how the SAPD is tied to the Capital Crimes Defense Fund. He noted the fund's purpose to act as an insurance fund. He explained the fund is drawn upon once the counties exhaust contributions. He noted nearly all of the counties participated in the fund as of December 2016. He commented that the counties didn't have to contribute to the fund if it remained unused. He explained that SAPD's relationship to the fund in that the counties depended on its services.

Director Fredericksen elaborated on the types of cases the SAPD handles. He noted the right to counsel in appellate cases as discretionary particularly in felony cases. He described the organizational structure of the SAPD and staffing. He noted team approach on capital crimes cases. He explained SAPD handling of direct appeals with felony convictions, and the post conviction cases. He added how the case-load was facilitated by the SAPD. He noted on the death notices in the State of Idaho. He remarked that the current case-load was considered manageable, but elaborated on loss of skilled attorneys who are able to handle more cases once they become familiar with case facts.

DISCUSSION:

Vice Chairman Lee asked regarding workload issues. **Director Fredericksen** responded that the high turnover in attorney retention contributes to workload issues. He commented that attorneys leave the SAPD due to lower salaries. He noted that performance guidance was not lost in 2016 because no cases shifted.

Senator Burgoyne asked regarding issues stemming from trial cases. He asked if it was difficult to gain access to criminal defendants for evidence development. **Director Fredericksen** responded there is no parity with the prosecutor's office which has permanent staff to allocate to perform research. **Senator Burgoyne** asked if there are problems arising out of claims that individual convictions should be reversed because they are underrepresented by lack of adequate public defenders. **Director Fredericksen** responded that claims do arise when attorneys fail to investigate.

Senator Lakey questioned if portions of the case-load relates to ineffective counsel and if it could be exemplified by effective counsel ratio. **Director Fredericksen** responded that 30 percent of attorneys handling post-conviction claims have a success rate roughly between 9 and 12 percent in reversal.

RS 25682

Relating to Peace Officers Standards and Training Fund. Victor McCraw, Division Administrator for Peace Officers Standards and Training (POST) presented this Routing Slip (RS). **Mr. McCraw** noted this RS pertained to an additional source of funding for POST prescribed by Idaho Code § 41-406(1)(e). He noted the legislation would authorize increase of funds POST could retain from one fiscal year to the next ranging from \$1 to \$3 million. He explained the main source of POST funding as citation ticket fines.

Chairman Lodge requested further explanation of the Statement of Purpose (SOP). **Mr. McCraw** noted that the RS pertains to the funding that POST didn't generate. He noted that POST receives approximately 14 of the 10 percent of court fees collected. He noted the 14 percent represented only a fraction of the collected court fees. He noted significant deterioration in court fees collection during the past year. He stated, with this RS legislation, POST was requesting for the limit to be raised and for the ability to retain those fees without having to return them.

Chairman Lodge asked regarding the emergency clause. **Mr. McCraw** responded the effective date is June 30th, and the return date on the fund is July 1st, which would leave POST with no funding.

Senator Burgoyne drew attention to some issues regarding the math component of the funds. He asked regarding what gets left over to yield POST the \$2 million. He expressed interest in learning more during the hearing on merits of how the math will work in paragraph (d).

Senator Hagedorn inquired regarding the kind of impact expected should the funds not be allocated to POST, and asked if there was a contingency plan. He posited perhaps funding POST through fees was not practical.

Chairman Lodge stated that having the appropriate funding is important so that the best trained people are placed in POST service.

MOTION:

Vice Chairman Lee moved to send **RS 25682** to print. **Senator Anthon** seconded. The motion passed by **voice vote**.

RS 25616

Relating to Adding Additional Members to the Idaho Public Defense Commission presented by Kimberly Simmons, Executive Director for the State Public Defense Commission (SPDC). **Director Simmons** explained the number of public defenders offices. She noted adding a member would give the necessary voice to the counties. She remarked on the importance of having a clerk as a member tasked with the administrative duties. She noted that 44 counties have contracts with institutional offices. She qualified the added members would benefit the SPDC.

Senator Burgoyne noted that the designation of how the members would be nominated was not proposed in the SOP. **Director Simmons** explained the flexibility of the process would be decided by the individual counties.

MOTION:

Senator Hagedorn moved to send **RS 25616** to print. **Senator Lakey** seconded. The motion passed by **voice vote**.

RS 25617

Relating to Application for State Funding Regarding Extraordinary Expenses Relating to the Provisions for Indigent Defense Delivery System presented by Kimberly Simmons, Executive Director for the State Public Defense Commission (SPDC). **Director Simmons** explained the ability to give the agency powers and duties. She noted Idaho Code § 19-850(2)(e) which established the Extraordinary Litigation Fund (ELF) to help offset the unusual and uncommon criminal case costs for the counties. She noted the policies and procedures define those uncommon circumstances. Counties are removed from applying for this source of funding. She also elaborated that the budget for the counties while unknown would give the County Commissioner the ability to apply for ELF relief should the counties encounter these additional costs.

MOTION:

Senator Lakey moved to send **RS 25617** to print. **Vice Chairman Lee** seconded. The motion passed by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
VOTE:**

Senator Anthon moved to send the gubernatorial appointment of **Eric Fredericksen** to the Idaho Public Defense Commission to the floor with the recommendation he be confirmed by the Senate. **Vice Chairman Lee** seconded. The motion carried by **voice vote**.

**GENERAL
BUSINESS:**

Chairman Lodge noted an Executive Order regarding continuing the Idaho Criminal Justice Commission (ICJC) that she brought before the Committee for review. She noted Senator Bart Davis was an ex officio member. She stated the membership reached 27 members.

Senator Burgoyne commented on serving on the ICJC in the past eight years. He noted that members focused on factual information where politics seldom entered. He explained the ICJC focused on empirical evidence, with members having deep commitment regarding gathering, and acting on factual information.

Chairman Lodge noted the legislation before the Committee would often benefit to be vetted with the members of the ICJC.

Senator Hagedorn commended the members and noted being the only lay person on the Committee. He noted the judicial system has operations which encompass the judges and officers. He noted the ICJC other side which helped knowing how it was facilitated.

ADJOURNED:

There being no other business, **Chairman Lodge** adjourned the meeting at 2:21 P.M.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary