

Minutes of the Joint Legislative Oversight Committee
March 19, 2014
Lincoln Room EW02, Capitol
Boise, Idaho

Cochair Senator Dean Mortimer called the meeting to order at 7:30 a.m. Attending the meeting were Senators Cliff Bayer and Elliot Werk and Representatives Shirley Ringo (cochair), Maxine Bell, Gayle Batt, and Elaine Smith. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff. Audience members included the following:

Representatives Darrell Bolz and Joe Palmer
Patti Tobias, Administrative Director, Idaho Supreme Court
Mark Warbis, Director of Communications, Office of the Governor
Paul Panther, Division Chief, and LaMont Anderson, Lead Deputy, Criminal Law Division,
Office of the Attorney General
Kevin Kermopf, Deputy Director, Department of Correction
Dan Chadwick, Executive Director, Idaho Association of Counties
Robin Nettinga, Executive Director, Idaho Education Association

APPROVAL OF MINUTES FROM MARCH 10, 2014

Representative Ringo moved to approve the minutes of March 10, 2014. Senator Werk seconded the motion, and it passed unanimously by voice vote.

REPORT RELEASE: FINANCIAL COSTS OF THE DEATH PENALTY

Senator Werk moved to receive the report. Senator Bayer seconded the motion, and it passed unanimously by voice vote.

Cochair Mortimer called on Mr. Mohan to introduce the report. Mr. Mohan said the request for the report came from two JLOC members: Senators Bayer and Werk. In conducting the study, the office worked with all stakeholders involved in aspects of the death penalty process. He thanked the following entities for their assistance: the Supreme Court, the Attorney General, the State Appellate Defender, the Department of Correction, and the Association of Counties.

Hannah Crumrine and Tony Grange presented the findings of the report. They said that financial costs of the death penalty were largely unavailable; criminal justice stakeholders varied in their ability to provide cost data largely because most staff do not track how they spend their time. Although comprehensive financial cost data were not available, the evaluators said other findings indicated that capital cases are more time consuming than noncapital cases—these findings were similar to those of national and other states' studies. The evaluators said parts of the guilt and penalty phase and parts of the appeal and post-conviction phase take longer to complete for death penalty cases and fewer defendants are sentenced to death and even fewer remain sentenced to death and ultimately executed.

Representative Bell asked if the Justice Reinvestment project addressed costs of the death penalty. Invited to speak by the cochair, Ms. Tobias, administrative director of the Idaho Supreme Court, said she had not heard any discussion about costs.

Senator Werk asked which factors determine whether a case will be tried as a capital offense. Ms. Crumrine said the study did not examine factors; however, county prosecutors must identify at least one statutory aggravating factor to prosecute as a capital case. She said the state funds the Capital Crimes Defense Fund to help counties pay trial costs for death penalty cases.

Referring to page 30 of the report, Representative Batt asked about the discrepancy between two statements: “county prosecutors do not track hours or costs for any case” and “counties must pay the first \$10,000 of trial costs before submitting reimbursement claims to the fund.” Ms. Crumrine clarified the two statements referred to two different county groups: public defenders (who do not track costs) and county prosecutors (who submit costs for reimbursement).

Representative Batt referred to exhibit 9 of the report and asked why reimbursed claims for Ada County (\$1.85 million) were so much more than those for Canyon County (\$450,000). Mr. Grange said both counties served nine defendants: Ada County submitted costs for eight defendants and Canyon County submitted costs for seven. The death penalty was withdrawn for one case in Ada County and three cases in Canyon County. Seven defendants went to trial in Ada County and two went to trial in Canyon County. In Ada County, one defendant was involved in two murders, which accounted for \$738,000, and another defendant was resentenced, which accounted for \$364,000. Those two defendants alone accounted for more than half of Ada County’s total.

Senator Werk asked if some counties were pursuing the death penalty more than others. Ms. Crumrine said the study did not look at the activities of each county; however, exhibit 9 on page 31 of the report listed reimbursement costs per county.

Representative Ringo asked if defendants rely more on public defenders or private assistance. Ms. Crumrine said the study did not look at individual case data. During interviews, one stakeholder said most defendants were represented by public defenders because costs were high.

Representative Smith asked why Jefferson County did not participate in the Capital Crimes Defense Fund. Cochair Mortimer asked Mr. Dan Chadwick, Association of Counties, to address the committee. Mr. Chadwick said all counties were members when the fund was created in 1998. Counties are assessed annually to raise \$600,000 for the fund. Jefferson County decided to withdraw because the assessment was not in its best financial interest. Senator Werk noted that if Jefferson was not participating in the fund, its ability to pursue a death penalty case would be limited.

Cochair Mortimer asked about the balance in the Capital Crimes Defense Fund. Mr. Chadwick said the balance was \$5.47 million with a handful of open cases. He said the Royal case included in exhibit 9 on page 31 had been settled.

Senator Werk referred to statistics on page 14 of the report that said of the 40 offenders sentenced to death since 1977, nine had sentences that violated federal law and another two had been released. Senator Werk asked why federal law was violated and why two were released.

The evaluators did not have specifics about why the law was violated, but Mr. Grange spoke to the releases. He said both defendants had been ordered new trials. In one case, the DNA evidence could not support pursuing a new trial and the defendant was released. In the second case, the age of the case and difficulty tracking down witnesses allowed the defendant to plead to a lesser charge and he was later released.

Senators Bayer and Werk were excused to attend other meetings.

Representative Ringo, by unanimous consent, asked for the date on the minutes to be corrected to March 10, 2014.

Cochair Mortimer invited the Governor's office, the Supreme Court, the Attorney General, the Department of Correction, and the Association of Counties to speak to the committee. All declined. Cochair Mortimer acknowledged Representative Darrell Bolz's presence in the audience and noted his intricate part in the justice system.

Representative Ringo moved to close the report. Representative Bell seconded the motion, and it passed unanimously by voice vote.

Cochair Mortimer said the committee would be picking a date to meet in a few months to discuss JLOC and OPE operations.

Mr. Mohan introduced Amanda Bartlett, the newest member at OPE. Cochair Mortimer invited her to speak to the committee. Ms. Bartlett said she had worked in county government for 11 years—7 years as a performance evaluator. She said she was excited to work at OPE.

Mr. Mohan said OPE was completing the water project and anticipated releasing it after primaries were over. At the next meeting, JLOC would also hear a follow-up report on contract management and discuss operations.

Representative Smith moved to adjourn. Representative Batt seconded the motion, and it passed unanimously by voice vote.

The meeting adjourned at 8:15 a.m.