

Minutes of the Joint Legislative Oversight Committee

March 21, 2019

EW42, Capitol, Boise, Idaho



Cochair Senator Mark Harris called the meeting to order at 8:41 a.m. Attending the meeting were Senators Dan Johnson, Michelle Stennett, Christopher P. Mathias (substitute for Cherie Buckner-Webb), Representatives Mat Erpelding (cochair), Caroline Nilsson Troy, Paul Amador, and Elaine Smith. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other staff from the Office of Performance Evaluations (OPE). Audience members included the following:

Senator Lee, Representative Berch
Jared Larsen, Policy Advisor, Office of the Governor
Sara Thomas, Executive Director, Administrative Office of the Courts

Approval of minutes from March 14, 2019

Representative Smith moved to approve the minutes from March 14, 2019. Representative Troy seconded the motion, and it passed by voice vote.

Report release: *Court-Ordered Fines and Fees*

Senator Mathias moved to release the report *Court-Ordered Fines and Fees*. Representative Erpelding seconded the motion, and it passed by voice vote.

Cochair Harris called on Rakesh to introduce the report. Rakesh said that the committee asked him to look at the collection of court-ordered fines and fees. The office had hoped to get necessary data from the courts' new data management system Odyssey. Unfortunately, the system was not able to provide the data needed, so the office used alternative data sources. Even with alternative sources, the report was solid and had new information about the collection of fines and fees not previously available.

Lance McCleve and Bryon Welch, principal evaluators, summarized the report. Lance said that Idaho relied on fines and fees to help offset the costs of operating its justice system. Fees are collected in civil cases and need to be paid before filing. Fines and fees are collected in criminal cases. Fees are set in statute and are mandatory. Fines can be discretionary and waived by a judge. Lance said in county fiscal year 2017, \$52.7 million in fines and fees were collected and distributed to counties, cities, and the state.

Statute allows for judges to waive civil filing fees for indigent litigants. The estimated rate of waivers varies by filing fee categories. Statute requires litigants provide certain criteria when applying for a waiver, but statute does not specify a standard for judges to determine whether a litigant is unable to pay. Using preliminary data, Lance estimated the waiver rate in fiscal year 2016 was 7 percent. He found that from fiscal years 2000 to 2015, the overall amount of fines and fees ordered had outpaced the amount collected.

Decades of unpaid fines and fees had added to a substantial backlog of at least \$195 million. It was not reasonable to assume that all \$195 million could be recovered or should be actively pursued. Collection efforts could easily reach diminishing returns.

Idaho would benefit from a statewide system of accountability that includes a formal process for measuring performance and improving policy and practice. Lance recommended that the Oversight Committee ask the courts to provide to the committee a plan that identifies next steps and timelines for establishing a system of statewide accountability for the assessment and collection of court-ordered financial obligations.

Senator Mathias referred to pages 18-19 of the report which lists the percentage of litigants who have their civil filing fees waived and details that litigants automatically get their filing fees waived if they are represented by certain organizations. He asked what percentage of litigants with waived fees were represented by automatic fee waivers and what was the wait list or how many people were rejected by organizations that automatically waive filing fees. Lance said it was a great question but that he could not answer without data from the courts.

Bryon next discussed specific details in the collection of fines and fees in criminal cases. He said the difference between the dollar amount of financial obligations ordered and the amount collected varied across crime type and across judicial districts. The 5th and 7th judicial districts outperformed other districts in collection rates and percentage of cases paid in full. If all districts performed at this level, the state could collect an additional \$1.4 million.

Bryon said that district practices partly explained the difference in collection rates. However, districts with a higher percentage of cases with collection actions did not have higher collection rates.

Several criteria affected collection rates in districts: (1) communication to defendants, (2) ability to pay, (3) offenders who were appointed a public defender, (4) collection agencies, (5) payment agreements, (6) scheduled review hearings, and (7) communication with probation officers.

On several collection issues, views differed about the role of judges and administrators in fostering compliance with court-ordered fines and fees. Bryon said his literature review indicated that courts needed a unified approach to collection in order to build an effective system.

Senator Johnson asked whether Idaho code or the courts allowed liens on delinquent fines and fees. Lance said liens could be used in civil cases but criminal cases were different. Judgments could be converted to civil judgment and then civil remedies could be used. However, there was ambiguity on who would be the beneficiary of the lien and that process was used sparingly.

Bryon recommended the courts do the following:

- Ensure data collection and reporting capabilities are comprehensive and readily accessible for internal and external use

- Establish a method for identifying and resolving gaps in data collection or reporting

- Establish accountability for the backlog of past due obligations

- Establish and communicate minimum collection program requirements

- Clarify roles and expectations for all justice partners

Establish a formal process for measuring performance and improving policy and practice statewide

Facilitate problem-solving among justice system partners to strengthen coordination

Senator Mathias said one take home message was the perceived variance among judges and court administrators when setting fees and fines and granting waivers. He wanted to hear how judges take all available information into consideration when making decisions and distill it down to best practices. Lance said the Senator's comment was in line with the importance of getting a handle on best practices.

Representative Amador said the courts implemented a lot of new things last year. In the future, he wanted to know whether Odyssey would track payments in a way for legislators to easily access at a higher level. Lance said it was his understanding the courts were moving in that direction. Based on data elements in Odyssey, data would be in the system. However, he did not know how accessible the information would be. That was part of the recommendation: to make data accessible. Courts said they have been using the OPE data request to prioritize the accessibility of data.

Jared Larsen, Policy Advisor, Governor's Office, responded to the report. He read from the Governor's letter and said the Governor was data driven and made decisions with the widest array of information possible. He thanked the Oversight Committee's efforts to study the issue. He said any action that the Oversight Committee took would help the Governor. Senator Mathias commented on data driven information. The proxy that was being used to determine ability to pay was indigency and whether individuals were represented, but moving forward it would be more helpful to break it into economic quintiles. Mr. Larsen said that additional ways to slice the information would be helpful to all.

Sara Thomas, Executive Director, Administrative Office of the Courts, said she wanted to discuss two things: (1) the availability of data and (2) what it means to have an effective system. The question being discussed was how to increase collection rates, but collections was not the entire scope of an effective system.

Ms. Thomas said that when the courts received the request for data from OPE, they were in two systems, the new Odyssey system in some counties and the older iSTARS system in others. When they started transferring to the Odyssey system, the courts realized that they had not been collecting appropriate data in the iSTARS system. They collect more data in the Odyssey system, but they were not finished with identifying all the data they wanted to collect. When they received the request from OPE, they did not have the resources to collect or report all the requested data.

Ms. Thomas said she was hiring data analysts and contracting for resources to expand Odyssey reporting capabilities using the OPE data request. She hoped by summer's end, anyone could find this information on the Idaho Supreme Court website. She said she would use it as a pilot and expand the data available.

Representative Erpelding clarified that sometime after March 2019, Ms. Thomas would provide more comprehensive data. Ms. Thomas said yes, the data would be available online to anyone.

Ms. Thomas said she wanted to have an effective system. A good collection system was not necessarily an effective system. When most states looked at their system and collections, the

takeaway had not been how to improve or increase collections. Reforms included requiring an ability-to-pay hearing for every defendant. In Idaho, defendants are told that they have to go to court and pay their fine or they will be held in contempt. Other states have found that its beneficial to not only tell defendants they must pay their fines, but also tell them they cannot be put in jail if they (1) do not have the ability to pay, (2) show that they do not have said ability to pay, and (3) have the right to an attorney to help show that they do not have the ability to pay. Ms. Thomas said the courts were working toward guidelines for defining ability to pay and having mandatory forms judges could provide that identify if and how much someone could pay.

Ms. Thomas said the Supreme Court recently ruled that the 8th Amendment applied to fines and fees at the local and state level. The courts were looking at the implications of turning over cases to collection agencies that charge an additional 33 percent to a fine or fee, and if that 35 percent added must be considered when determining whether the fine or fee was excessive. She said she wanted to be more consistent around the state through things such as mandatory forms and processes. The courts wanted to know what practices were effective in bringing in money and ensuring practices were constitutional.

Representative Erpelding thanked OPE for the report and Ms. Thomas for her remarks. He said the report was not meant to determine how to squeeze blood out of a turnip, but how to close the gap in collection rates while respecting the rights of the individual.

Representative Erpelding moved to ask the courts to provide the committee with a plan that identifies next steps and timelines for establishing a system of statewide accountability in a timeline that allows OPE to complete a comprehensive follow-up review of the report, *Court-Ordered Fines and Fees*, before the 2020 session. Representative Amador seconded the motion, and it passed by voice vote.

Other committee business

Rakesh said a report on investigating allegations of child neglect and a follow-up review on *Residential Care* would be ready in April or May. He would contact members to authorize a release in the interim and schedule a hearing during the next legislative session. In lieu, members could come to Boise for an interim meeting.

Representative Troy said she was disturbed by Ms. Thomas' comments that an effective system of fines and fees did not include collections. She said there was a reason for collections and there was a payment to society that was due when someone reached the court system and was convicted of an offense. She wanted to go on record stating that whatever the courts move forward with, collection of fees was a critical component and a value that Idaho had adopted.

The meeting adjourned at 10:00 a.m.