

PROPERTY TAX
INTERIM COMMITTEE
REVISED MINUTES *
(Pending Committee Approval)

Thursday
August 7, 2008
Capitol Annex, Room 204
Boise, Idaho

The meeting was called to order at 9:40 a.m. by **Co-chairman Senator Brad Little**. Present were Senators Tim Corder, Lee Heinrich, Jim Hammond, Jeff Siddoway, David Langhorst and Elliot Werk; and **Co-chairman Representative Jim Clark**, Representatives Lynn Luker, Raul Labrador, Bill Killen and George Saylor. Representatives Scott Bedke and Frank Henderson were absent and excused. Legislative Services staff present were Eric Milstead and Twyla Melton.

Others in attendance were: Patti Tobias, Administrative Director, Idaho Supreme Court; Dan Chadwick, Executive Director, Idaho Association of Counties; Sharon Burke, Kerry Ellen Elliott, and Kasha Glynn, Idaho Association of Counties; Ken Harward, Association of Idaho Cities; Dave Navarro, Ada County Clerk; Valencia Bilyeu, Brent Davis, and Ross Borden, City of Boise; Roland Gammill and Corrie Keller, Idaho Supreme Court; Dan John, Idaho State Tax Commission; Randy Nelson, Associated Taxpayers of Idaho; Teresa Molitor, CENTRA Consulting; McKinsey Miller, Gallatin Group; and Colby Cameron, Sullivan & Reberger.

Co-chairman Senator Little called for the approval of the minutes from June 30, 2006. **Senator Corder moved that the minutes be approved, and Senator Hammond seconded the motion.**

Representative Killen referred to the June 30, 2008 minutes on page 5, 3rd paragraph which stated if a citation is issued in the unincorporated area of the county, then there is *not* a similar distribution back to the county. Should this be a similar distribution back to the city? **Senator Hammond** stated that his question was: If a sheriff is issuing a citation on the county, are they getting some kind of rebate from the city? **Co-chairman Senator Little** deferred the question regarding the minutes to **Ken Harward**, Association of Idaho Cities. **Mr. Harward** stated that the minutes were stated correctly and the dialogue was accurately reflected. **Co-chairman Senator Little** asked **Eric Milstead**, Legislative Services, to check the tape regarding “poster child counties” and possibly something similar to a cap fund.

Being no other questions or comments, the motion to approve the minutes passed by voice vote subject to review.

The first speaker, **Mr. Milstead**, provided a review of the Fiscal Note of 1993 House Bill 458. Two handouts were distributed: (1) 1993 House Bill 458 and 2008 Updates and (2) a copy of House Bill No. 458. Both are on file in the LSO.

* Page 6 , last paragraph (Representative Luker): . . . “out-of-state constitutional provision” was changed to “state constitutional provision”

Mr. Milstead reviewed the stated intent of the bill which was to transfer responsibility for the funding of the court system from the counties to the state. There were no specifics about what the bill was focusing on as far as a definition of the court system and what the fiscal note dealt with. HB 458 says the state would be responsible for the operating costs of the courts, including personnel, but the counties would remain responsible for the facilities. The original fiscal note estimated that approximately \$20.5 million of fine, fee and forfeiture revenues would go to a state court fund. This amount would be augmented by an additional \$10 to \$15 million from the state General Fund for a total estimated cost to operate the state court system of \$35 million.

At the request of **Co-chairman Representative Clark**, **Mr. Milstead** put together an updated version of the fiscal note. By using the average CPI over the last 15 years, 3% or roughly \$1 million per year would be added to bring the estimated total to \$50 million. Using the same apportionment as found in House Bill 458, the amount coming from the General Fund would be about \$21.5 million. There was no information regarding the methodology used to arrive at the original dollar amount so the revised estimate is based on a number that couldn't be tracked. There also has been growth in some of the programs. As a result of a survey of counties that is being prepared, more reliable cost figures will become available.

Senator Werk asked if the \$50 million covers personnel in that portion of the court system. **Mr. Milstead** responded that it would cover those elements that were covered by the original fiscal note including operations and personnel but did not include facilities. **Co-chairman Senator Little** referred to the review of the minutes and asked if this would include civil and criminal courts. **Mr. Milstead** stated that his understanding would be the entire trial court system. Handouts are available in the LSO.

The second speaker, **Patti Tobias**, Administrative Director, Idaho Supreme Court, reviewed the court systems highlighting the structure, operations, and funding of the Idaho Courts and responded to the questions raised at the last meeting regarding the positive impacts of the drug court. There were several handouts: (1) Annual Report of the Idaho Supreme Court, (2) Overview of the Idaho Courts, and (3) A complete set of the presentation slides. All documents are on file at the LSO.

Article V of the Idaho Constitution provides that the courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The Legislature has provided the statutory framework, and the necessary state funding for the courts. The counties, by statute, provide suitable and adequate facilities for the district court and provide for the staff, personnel, supplies, and other expenses of the district court. This has all been matched by the judges outstanding leadership, commitment, and innovation. Idaho has one of the best court systems in the nation. It is truly a top tier court system by any performance measure. The Idaho Supreme Court has long set a bold administrative agenda to provide equal access to justice, improve the fast and fair resolution of all court cases filed with the courts, promote excellence in service, and increase the public's trust and confidence in the Idaho courts. Highlights are included in the packets and also posted on the Web site.

The Idaho court system has been recognized as a national model for its efficient court structure, centralized management, and statewide budgeting. **Ms. Tobias** stated that all seven judicial districts work together.

Ms. Tobias reviewed what happens with a criminal proceeding as it moves through the court system from pretrial, trial, post-trial/guilty plea, to the post-sentencing and incarceration. Working through this process involves many offices and participants at both the state and county level involved in each and every one of the hundreds of cases that are filed. Similarly, in civil cases, one case can involve millions of dollars or simply the principal of the matter in the small claims court involving \$200, with one or many hearings. Over twenty years ago, Idaho was one of the first in the nation to adopt time standards. All court cases are tracked against rigorous time standards to ensure that all parties who file a case in the courts can have their case heard in a timely manner. As of June 30, 2008, the median age of all pending cases is well below the Idaho time standard.

Senator Corder asked if the problem that existed about a year ago regarding delays caused by court recorders that affected the median results had been resolved. **Ms. Tobias** clarified that a year ago the discussion was about the age of appellate cases and the numbers shown today refer to the age of district court cases. However, there have been substantial changes made in filing transcripts by court recorders reducing the aging of appellate cases.

Ms. Tobias explained that clearance rates is another way courts nationwide monitor their progress. Clearance rates are calculated by the number of disposed cases divided by the number of cases filed to provide an assessment of how well courts are keeping up with the incoming caseloads as well as how well cases are being disposed of and whether pending caseloads are being reduced. **Co-chairman Senator Little** requested an explanation of how the case disposal rate could be 110% and what is Idaho's backlog rate relative to other states? **Ms. Tobias** pointed out that at any given time there are hundreds of pending cases and some of those could have been from a previous year so the disposal rate would be higher than new cases for that year. Backlog has not been specifically addressed. The two categories that are measured very carefully are pending cases to make sure they are moving in a timely manner and the clearance rate to make sure more cases are being disposed of than are being filed or at least keeping up with the number of pending cases.

Co-chairman Representative Clark asked why the Clearance Rate Chart showed only 24 states. **Ms. Tobias** responded that they probably just compared the courts that had similar jurisdictions but she would have to review that definition.

Representative Saylor asked if Idaho was still doing well in keeping up with the caseload in spite of all of the news about large caseloads. **Ms. Tobias** reported that the Idaho judiciary is managing the increasing caseloads as efficiently as possible. The Legislature has responded positively when a new judgeship or the use of senior judges has been requested.

Ms. Tobias used a snapshot of a day in the Idaho courts to demonstrate the incredible workload and complexity of the district courts and the impact judges and county paid court personnel have in each community. In 44 county courthouses in 67 locations there were 129 district and magistrate judges, 7 senior judges and 17 traveling judges handling 2,000 cases involving 800 jurors and over 100 trials. There were 2,100 new cases, 3,300 disposed cases and 120,000 pending cases. Over 500 court clerks collected \$300,000 in fines, fees, and court costs. Idaho was the first state in the nation to design and install a statewide trial court information and

computer system. The ISTARs computer program is funded by a technology fee that the Legislature established on all court cases filed. It provides 1,100 computers and printers in all district courts and county courthouses throughout the state. A drug court module and child protection module have been added to the system. **Ms. Tobias** continued the description of a day in the courts and a copy of the information is available at the LSO along with a full copy of this presentation.

The Idaho courts, the third branch of government, continue to perform historic constitutional and statutory duties to provide individual justice in the one-half million individual cases filed last year. A new role has emerged in working alongside the other branches of government both at the state and county level to solve some of the most intractable and costly social problems of the day. There continues to be an explosive population growth in many parts of the state and a corresponding growth in challenging caseloads. This has put immense pressure on budgets at both the state and county levels.

Idaho courts are funded by the state of Idaho and the 44 counties. The state funds the Supreme Court, its administrative office, the Court of Appeals, the State Law Library, and the Judicial Council including all of the personnel and facilities. In the district court and magistrate division, the state funds salaries for judges, court reporters, and the seven trial court administrators. In lieu of full-time judgeships, the Legislature funds senior judges as a cost effective, mobile work force where the needs are greatest. The State also funds the personnel, operations, and facilities for the Snake River Basin Adjudication and the Volunteer Guardian Ad Litem programs that are available in each of the seven judicial districts in child protection cases. The counties provide all of the staff, personnel, facilities, equipment, supplies, and other expenses for the district courts. The Legislature appropriates over \$10 million in dedicated funds with much of this supporting district court personnel and operations. Almost \$8.5 million support the drug courts, mental health courts, coordinated family court services, court assistance, court interpreters, millennium fund, and technology. **Representative Luker** asked where those funds come from. Do they come from dedicated funds? **Ms. Tobias** concurred that dedicated funds pay for these district court services. **Senator Heinrich** inquired if the approximate \$3.4 million in the technology fund was keeping up with the demand and change in technology? **Ms. Tobias** said the \$3.3 million is keeping up pretty well. About five years ago, the courts went to the Legislature to recommend an increase in the technology fee to accommodate the growth in caseloads and technology needs. Today, the technology fund is fully supporting the ISTARs program and all of its enhancements and equipment. There are also funds available to add digital recording in all of the courtrooms throughout the state. There may be a need for an increase when all courtroom documents become digitized. That will not be this year.

The county expenses for the district court are broken down by the best functional areas designated by the courts and counties. The Criminal Justice and Juvenile Justice sides are broken out separately. Further detail will be given by **Dan Chadwick**, Idaho Association of Counties, in his presentation and **Dave Navarro**, Ada County Clerk will present the proposed survey to capture these expenses and those will be ready for the next meeting.

Ms. Tobias addressed the drug court questions from the last meeting: who funds drug courts and who benefits? Idaho is ranked No. 2 nationally for drug courts per capita. This is an

extraordinary accomplishment of all three branches of government at both the state and county level. With this infrastructure in place, judges can now order offenders to drug courts as a cost-effective sentencing alternative in felony, misdemeanor, DUI, and juvenile cases. **Senator Langhorst** asked how Idaho rated in the number of cases that go to drug court. How many drug cases are actually handled by the drug courts? **Ms. Tobias** said she could not provide that number right now. However, information is available for the number of offenders sentenced to the penitentiary, those sentenced to probation, and the number of felony offenders sentenced to drug courts during the last year. **Ms. Tobias** will find out if that information is also available nationally. **Senator Langhorst** said he would be interested in Idaho's ranking in terms of utilization.

Ms. Tobias continued to highlight the Legislature's statement of policy regarding substance abuse under the Idaho Drug Court and Mental Health Court Act. Substance abuse is a contributing factor for much of the crime in Idaho. It costs millions of dollars, contributes to the increased prison population, and adversely affects Idaho children. **Ms. Tobias** went on to describe the Key Factors of Effectiveness (IC 19-5602 Legislative Statement of Policy) and the Legislative Goals for Drug Courts. (See slide 23-24 of presentation) The funded capacity of drug courts and mental health courts has been set at a total of 1,227 for felony offenders, misdemeanor/DUI offenders, and juvenile offenders. Thirty-eight of the forty-four counties have either a drug court in that county or access to a drug court in a contiguous county. Research shows that drug courts have been effective in reducing recidivism. An evaluation study started in 2002 followed offenders in eleven Idaho felony drug courts through 2006. The data showed that all drug court participants, graduated or not, showed a recidivism rate of 29.5% graduates had a 10.3% rate and the comparison group (no drug court participation) was 37.7%. This is all Idaho data. **Senator Werk** asked if the comparison group was really compatible, was the comparison "apples to apples"? **Ms. Tobias** emphasized that the national researchers involved in the study worked very laboriously to pick a matched comparison group by crimes, age, Level of Service Inventory (LSI) scores which measure risk and needs, and the level of substance abuse addiction. This was a statistically solid comparison group.

Representative Labrador wanted to know why the participants in the comparison group had not been to drug court. **Ms. Tobias** responded that it could have been for any number of reasons: they may not have wanted to be in drug court; they may not have been eligible based upon prior offenses; or there may not have been space in the drug court. There may not have been a drug court available in that county. All participants in the study were Idahoans.

Representative Luker inquired if numbers were available comparing cost per capita of putting a participant through drug court versus the cost of incarceration. **Ms. Tobias** answered that they do have those costs but they did not add them to the outcome evaluations and, as an example, roughly, for felony offenders, a year in the penitentiary is approximately \$20,000-\$22,000 while a year in drug court is about \$6,000, considering drug abuse treatment, probation supervision, drug testing and coordination costs. Similar cost tradeoffs occur for misdemeanor offenders and juvenile offenders maintained in the community. **Co-chairman Senator Little** commented that a lot of this research was a result of the legislative audit 3-4 years ago that was less than

complimentary about the drug court. **Ms. Tobias** responded that while the audit was very uncomplimentary of the substance abuse delivery system. It was very complimentary of the drug courts. The legislative audit did not criticize drug courts. Research has always been conducted on drug courts because it is important to convince with hard facts that this is a cost-effective, statistically solid sentencing alternative.

Representative Killen referred to the matched comparison group and asked what proportion of the people who are qualified for admission seek admission but do not get admission; is there a backlog? **Ms. Tobias** answered that they could expand drug courts, the judges are willing, but there is not a backlog number right now. The current capacity is 349 and there are 10,000 plus DUI cases filed in a year. In years to come, this may be an area that might be expanded. **Co-chairman Senator Little** stated that one of the limiting factors for both DUIs and drug courts is the availability of providers. Is this correct? **Ms. Tobias** agreed that having a sufficient capacity of trained professional treatment providers in all communities is one of the challenges that the Interagency Committee on Substance Abuse is facing. The Legislature, in 2008, granted a request from the Interagency Committee on Substance Abuse for an increase in funding. Substantial dollars were added for treatment at the misdemeanor level for both drug courts and intensive supervision. That will continue to be monitored. Funding is used for drug court coordinators in the district courts, the treatment capacity, and the necessary drug testing used to hold offenders accountable. This all aids in reducing recidivism instead of overcrowding jails.

Representative Labrador asked what percentage of participants graduate from the drug courts. **Ms. Tobias** asked to come back to this question since it will be answered at the end as part of the Annual Drug Court Report.

In summary, the positive impact from drug courts are:

- Families stay together.

- Offenders are working, paying taxes, and contributing to the community.

- Crime and prison populations are reduced.

The Idaho courts have an extraordinary partnership with the counties. They fund the district court and the necessary personnel. There is also an extraordinary partnership at the state level with the Legislature and the Executive Branch. All three branches of government, the state, and the counties are working together and have significant roles insuring that all Idahoans have access to timely, fair, and impartial justice. Idaho has the best court system in the nation.

Representative Killen referred to the \$40 million annual appropriation for state costs and asked what the value of the counties contribution would be. **Ms. Tobias** stated that an explanation would be covered later in the day when a proposed survey which will capture those costs from the county expenses is presented.

Representative Luker asked, looking at the broader mandate that this committee has to reduce property taxes and looking at the state constitutional provision that says the court shall constitute the unified and integrated judicial system, do you see a unified funding system as more closely accomplishing that mandate of having a unified and integrated judicial system?

Ms. Tobias responded that the funding of the court is not a constitutional matter, but it is possible to continue to have a unified and integrated system of the courts whether or not some of the county funding responsibilities were transferred to the state. Some would advocate that more state assumption of county funding responsibilities for the district court does promote a more unified system of the courts but it would not rise to a constitutional question. **Representative Luker** followed up. Other than providing property tax relief, are there any efficiencies or other tangible or intangible benefits for shifting that funding? **Ms. Tobias** said the intent is that following the collection and compilation of those costs through the survey, the recommendations from the judiciary working with the counties regarding certain efficiencies would be brought forward. For example, by transferring funding for county paid law clerks that assist the district judge to the state, the Supreme Court would manage that responsibility and may gain certain efficiencies in the assumption of costs by the state. It would be more meaningful to develop recommendations after the costs are collected.

The third speaker, **Dan Chadwick**, Executive Director, Idaho Association of Counties (IAC) will review the structure, operation, and funding of the criminal and juvenile justice systems from the county perspective. A copy of the power point presentation and all handouts will be on file at the LSO.

The process in the court system begins with action by law enforcement; the investigation of the crime by the county sheriff or deputy, the arrest made by the law enforcement officer who will also investigate the crime, and will make a report to the prosecuting attorney who will, in turn, make a charging decision which will be absolute no matter which law enforcement agency it comes from or whether it is a felony or misdemeanor. Forty-one out of forty-four counties have elected prosecutors. There are approximately 200 prosecutors and deputy prosecutors in Idaho. They are well trained individuals who make difficult decisions each day. **Co-chairman Senator Little** asked: When do the prosecutors send cases/information to the Attorney General's (AG) office? **Mr. Chadwick** stated that the prosecutors may send requests for assistance when a case may have conflicts. **Co-chairman Senator Little** asked is it ever mandatory or is it up to the prosecutor? **Mr. Chadwick** responded that it is never mandatory. It is only through the discretion of the prosecutor that anything is sent to the Attorney General.

Co-chairman Representative Clark stated that this issue was tested in the courts a few years ago. **Mr. Chadwick** explained that it was the Newman case in Minidoka County where the AG attempted to step in and supervise a criminal case and the Idaho Supreme Court said it was clearly within the discretion of the prosecuting attorney.

The prosecutor will make the charging decision, and the process will start, the arrest will be made, the individual will go to jail which impacts the county budgets. In many cases, a public defender will be appointed to represent the defendant. If the defendant is a needy person and cannot afford the complete cost of an attorney, Idaho statutes say the defendant is entitled to a public defender. A judge will analyze the need. In the public defender area, there is a constitutional issue related to funding. Idaho has a study underway that has been supported by IAC, the Criminal Justice Commission, and the State Public Defenders, to look at the nature of the Idaho Public Defender System. There is not a public defender system in Idaho, there are

three ways of providing public defense: through an office like Ada or Kootenai Counties; through a contract similar to Canyon County; or by a public defender appointed by the courts.

Senator Werk commented that this is a system with a real lack of uniformity. Are there any constitutional issues due to the lack of uniformity that could be a basis for what is being done here right now? **Mr. Chadwick** stated “absolutely!” There is a constitutional issue as to whether or not a defendant is getting an adequate defense. That is the reason for the study. **Senator Werk** asked if the state were to assume that responsibility, would there be a benefit to the counties? **Mr. Chadwick** said there is an immediate and direct cost to the counties at this time and more information about that will be gathered in the survey. Counties pay for all public defenders even for city misdemeanor cases.

Representative Killen brought up one factor, the defendant must be subject to incarceration to be eligible for a public defender. The survey might include an assessment by the magistrates if they determine a possible incarceration and make that determination known. This would make a huge difference in the caseloads coming through the public defenders office. **Mr. Chadwick** confirmed that this issue is very interesting and the counties would be interested as well. The prosecutors are meeting soon and this idea can be presented to them as well.

Mr. Chadwick continued with regard to the public defender and death penalty cases which is a special circumstance in Idaho. There was a homicide in Valley County which produced four defendants and each was entitled to two attorneys because of the potential death penalty. How was Valley County going to afford that kind of case and circumstance? The proposal was to hold back 5% of the entire county budget as a starting point to deal with this case. **Co-chairman Senator Little** asked about ordinary and necessary. **Mr. Chadwick** responded that ordinary and necessary may have come into play, but this had an immediate impact on the budget. **Co-chairman Senator Little** asked if counties had used this in these kinds of cases. **Mr. Chadwick** said he was not aware of any. As a result of the Valley County case, this Legislature has been very proactive in looking at those kinds of issues and there was about a year-long study on the issue of capital crimes and whether or not Idaho was going to have a system of cash register justice when it comes to the death penalty. This is where the issue of fair representation comes into play. In one county, one can pursue the death penalty, in another county it is not possible. That is a constitutional issue.

Representative Killen observed that it was interesting that with four defendants and eight attorneys, not one of the defendants was from Valley County. That is another aspect of local versus state funding.

As a result of this case, the Legislature authorized two different things: (1) Establish a Capital Crimes Defense Fund which is an insurance pool that counties put together; and (2) Authorize the creation of a State Appellate Public Defenders Office so the state would assume responsibility for handling criminal appeals by defendants. In order to participate, the county must participate in the Defense Fund. Forty-three out of the forty-four counties participate. This has been a good program for the state and the fund is totally funded by the counties. **Senator Werk** asked if that one county does not participate, how can there be uniformity in terms of its

ability to prosecute in the case of the death penalty? **Mr. Chadwick** answered that Jefferson County was confronted with that issue about two years ago. There was a homicide in the county and they chose not to pursue it as a death penalty case. **Senator Werk** commented that Jefferson County would probably be looking at the cash register to determine whether or not they could prosecute. **Mr. Chadwick** stated that was a possibility but it is the hope those cash register decisions are not made and that decisions are made for the right reasons. He said there are reports sent to various Senators and JFAC from time-to-time regarding the activities of the State Appellate Public Defender and there is more information on their Web site.

Mr. Chadwick continued to talk about county funding. The costs involved with extraordinary criminal case costs in cases such as the State vs Johnson in Blaine County where a juvenile murdered her parents and was charged with murder. Sarah Johnson was sixteen at the time and, being a juvenile, could not be charged with the death penalty but could be charged with first degree murder. The case was so publicly visible it was transferred to Ada County. All the components of that case had to be moved for both the prosecution and defense. That trial cost Blaine County well over \$1 million. If a case such as this had come out of a poor county, how would they take \$1 million out of their budget to pursue it?

The State vs Langford retrial was just completed in Idaho County. This case was sent to Shoshone County on a change of venue. The cost was over \$300,000 on the retrial alone. They could not seek the death penalty because of the witnesses, yet the cost of that kind of case can be a budget buster for any county. They are unpredictable and difficult to plan for and have significant impacts on county budgets.

Mr. Chadwick covered the costs involved with the clerks of the district courts. There are 44 elected clerks and over 400 deputy clerks in Idaho. They are involved throughout the entire case process.

The counties are also responsible for the costs of other personnel involved in a case. The law clerks have been a large issue over the years because the county does not control their hiring or salaries. That is all set by the district judge. There are other costs including court interpreters, bailiffs and court security and transcripts by court reporters. The Ad Hoc County/Courts Shared Employee Committee has looked at a number of these costs and relationships. It was intended to last one year, but has evolved into a multi-year process. All those costs continue to escalate as qualifications and needs continue to rise.

Jury trial expenses are all paid by the county. The requirements are set forth in statute, Title 2, Idaho Code, and they are not cheap.

Sentencing costs are covered by counties in both adult felony and adult misdemeanor cases. Costs occur at every level of the sentencing system. The results of those cases, such as local jail time or even the drug courts, impact the county. Specialty courts have done a great job in keeping people out of the system, but there is still an impact at the county level. They still have to provide the services. **Representative Saylor** asked how much variance occurred around the state for local jail time. **Mr. Chadwick** said that information may be available and can probably be obtained from a combination of the sheriffs and the courts. That data will be gathered for the committee.

Senator Werk asked if the sentencing of jail time was local jail time paid for by the counties through the state contract with county jails. **Mr. Chadwick** answered that it depends on the case, it could be reimbursed back to the county at \$40/day or paid by the county in case of a probation violation where the counties are not necessarily reimbursed. **Senator Werk** pursued the question. If the original sentencing that occurs with a felony violation sends someone to a county facility, will the state reimburse? **Mr. Chadwick** said not necessarily. If there is a felony probationer that has violated probation and they are put in jail for that violation, there is not necessarily going to be any reimbursement. **Co-chairman Senator Little** asked if that is going to be part of the study that is being prepared. **Mr. Chadwick** answered that a separate study would be done on that issue.

Adult misdemeanor has jail time for up to one year and possible probation exceeding that year. County probation officers and adult misdemeanor probation officers have become a major component of this system. The Legislature enacted House Bill 408 increasing the county probation system providing for increased fees, training and education, and making sure there is a good, solid system. This is a big partnership potential for the courts, the counties, and the Department of Correction to keep people out of the felony system. It is better and cheaper to keep people at home and it is an important component in managing prison populations.

In 1994 the Idaho Legislature spent a year in a thorough, detailed study of juvenile justice in Idaho relating to the Youth Rehabilitation Act and all other related acts and decided to change the focus in Idaho through the Juvenile Corrections Act of 1995 creating the Juvenile Corrections System which is a balanced approach consisting of competency development, accountability, and community protection. The Department of Juvenile Corrections was created to support and assist county government in providing programs, technical assistance, and funding. It was a major shift in how the counties felt about juveniles in the state of Idaho. The partnership was set out in Idaho Code Section 20-501. Details are available on the Juvenile Corrections' Web site including a ten-year summary of how this process has worked. However, the counties have almost all the responsibility for providing juvenile corrections in the state. The county provides the programs and support and the state provides the funding, about \$8.6 million this last year to support, not supplant, what county funding is required.

Mr. Chadwick concluded his remarks. Reviewing the system is important and it requires the cooperation and coordination between the courts, the counties, and above all the Legislature.

Fourth speaker, **Ms. Tobias**, provided a book-report on Court Fines and Collections. The handout is a compilation of (1) Statewide Summary of Trial Court Fund Distributions (p1); (2) the Idaho Statutes that apply to fines and fees (p2-p101); and (3) the Appendix outlining the 2008 Filing Fee Schedule-District Court and Magistrate Division (p102-108), available in the LSO.

Ms. Tobias asked the committee to turn to the Statewide Summary of Trial Court Funding (p1) for the year ending September 30, 2007. This details the revenue source, the statutory authority, and the amounts collected that year. The report is broken out to show which government entity is the recipient of these monies. The total revenue to the counties based on those statutory

provisions for fees, fines, etc., for the year ending 2007 was \$17 million. The same information is shown for cities, \$7.4 million, and the state, \$22.4 million. This includes civil, criminal, and juvenile cases, every kind of case.

Beginning with page 92 of the report, there are four illustrations showing how fines may be distributed. The first illustration is based on a speeding infraction where the driver is going 1-15 miles per hour above the speed limit and receives a \$75 fine. The \$75 is distributed to court costs, P.O.S.T., county justice fund fee, ISTARs fee, and fine (fine is broken down further depending on whether a city or county officer makes the arrest). There are similar examples through page 95. These are very complex formulas.

Representative Killen stated that, based on experience, and in particular DUI cases, if there is a public defender there is an additional fee on top of the ones just discussed, treatment programs are additional fees; those things tend to exceed these numbers in terms of costs. **Ms. Tobias** responded that the examples are costs just up to the conviction. There are other substantial costs after the conviction for each individual defendant, i.e. for a drug and alcohol evaluation and treatment, probation fees, and any public defender costs if they are not eligible for services. Pages 97-99 combines the statutory provisions that consolidates all fees into a schedule for a useful reference.

The committee requested at the last meeting to see some of the differences between the criminal side and the civil side. Page 102 is a civil filing fee schedule which is a court document. It combines all the statutory provisions to make some sense so an attorney, when filing a civil petition with the court, will know the requirements to be assessed for that kind of case. **Senator Werk** stated that it appears that all these fees were passed at different times. However, is the idea of the fees associated with court filings to cover the cost associated with whatever paperwork needs to be done? **Ms. Tobias** responded that there are two concepts: 1) There should be a rationale that it is related to the work of the courts. 2) There is also a sense that it is a funding stream that can be and has been tapped into from time to time. The Legislature always worries about access to justice, so they don't want to see those fees go too high, but all bear a relationship to the work of the courts. ISTARs, for example, has an assessed fee of \$10; every court case is entered into ISTARs. It requires sophisticated programming, expensive equipment, etc., but it needs some better policy definitions which will be covered later in this report.

Senator Hammond referred to the speeding violations with a fine of either \$75 or \$140, asking if someone could go 60 or 100 miles over the speed limit and still pay \$140. **Mr. Chadwick** said "yes, but a complaint would be filed and that person would be charged with either reckless driving or inattentive driving which is a misdemeanor and then the fine gets a lot bigger and could be subject to jail time."

Ms. Tobias moved on to the folder "Repaying Debts." At the last meeting, it was mentioned that Idaho was one of only two states asked to work closely with the Council of State Government to learn how the recommendations made in this report could be translated into an effective policy and practice. Idaho agreed to serve as a learning site. The counties, courts, judges, state probation, county probation and others have come together to see how fines, fees, surcharges,

restitution, child support, treatment and supervision fees are imposed and collected in Idaho. We hope to learn what everyone can do together to better coordinate, integrate, track, and prioritize all of these debts and what statutory changes and best practices could improve overall collections. Current practices in the 44 counties are being reviewed. Statutes provide that collection agencies can be used; there is a provision that permits credit cards to be used for payment; and, there could be state tax intercepts (not implemented). There is also a move at the federal level for tax intercepts for debts owed to the courts. In addition, reviews will be conducted on how to improve coordination on amounts due and owing to the Department of Health & Welfare (H&W) for child support payments, restitution due to a victim, probation supervision fee that is due to the Department of Corrections. Other questions that will be examined include: What is a better way to look at the full range of court costs? What impact will online e-payments have? Could this collection activity be centralized? Who is collecting restitution amounts? Could incentives be used and how are they being used in other states? Could drivers license suspension or renewals be used? This group is reviewing the effectiveness of these approaches and identifying some benchmarks and what should be the key components of effective collection. **Ms. Tobias** reviewed some collection data for 2004, 2005, and 2006.

Senator Corder referred to the comments about driver's license suspension. This is a significant and serious issue. There could be an Idaho driver in Texas; Idaho revokes his license and he can't move. Someone then has to go to Texas to bring that truck home. This is a serious issue that really does need to be resolved.

Senator Hammond asked about the amount collected versus the amount ordered (referring to the collection data sheet), is the amount collected the aggregate amount of debt or is it just the amount ordered that year? **Ms. Tobias** answered that it is the amount ordered that year and the amount taken in that year which may or may not have been ordered that year. It could have been ordered in 2005 but collected in 2006. The amounts are not matched up. **Senator Hammond** stated that it might be a better comparison to look at the aggregate amount ordered as well as the aggregate amount collected. **Co-chairman Senator Little** restated the question. What is the total outstanding at the end of the year? **Representative Killen** commented that sometimes it is ordered that so much a month be paid, that doesn't mean it is overdue.

Senator Heinrich asked if it was possible to do an educated guess as to what will never be collected. **Ms. Tobias** stated that she did not know and would have to look into that question. The group that has been looking at the collection issues is providing a better way to look at the data and how to improve the practices.

Co-chairman Senator Little inquired if a partial payment has been made, does that get apportioned out, and is everyone at the same place? **Ms. Tobias** stated that there is actually a priority of payment schedule based on the best review of the statutes. They are looking at this schedule to bring it to the Legislature so priorities can be set. Currently, the schedule only reflects money coming into the courts. It may be better to have one statute that addresses the priority of payments of any money due and owing and they would come to the Legislature recommending that statute.

Senator Heinrich asked if it is safe to say there is not uniformity in the ability of the counties to go out and aggressively do collections because it is the sole cost to the county to do collections; if they don't have the resources, they do not pursue it. **Ms. Tobias** concurred that was a fair statement. They are looking at best practices that can be used by all of the court clerks across the state. In the past, the focus has been on tools but this is very time intensive.

Ms. Tobias highlighted the high rate of misdemeanor infractions. This is an area for a tremendous opportunity to increase collection rates. Restitution collections to victims has to be a priority. The courts, the counties, and the state working together are doing a great job in tracking and collecting these debts and there is a great opportunity to improve.

Representative Killen asked if the amounts ordered and paid via ISTARs include the amount to the public defender and reimbursement for other services. **Ms. Tobias** referred the question to **Corrie Keller**, Supreme Court. **Mr. Keller** stated that they do.

Representative Luker asked if the restitution and fines collected are handled separately or are they coordinated by priority between the two. For instance, if \$200 comes from the defendant and it is not designated, how is that handled? **Ms. Tobias** responded that restitution is priority #1 or close to the top of the list. **Mr. Keller** added that the money would be paid according to the priority list, i.e., court costs then restitution and on down the list.

Senator Siddoway asked who makes the priority list determination. Is there some discretion by the district court or the clerk as to how that is handled? **Ms. Tobias** stated that the courts set the priorities as best they could based on statutory language and the computer was programmed to allocate the money according to that priority payment schedule.

The fifth speaker was **Sharon Burke**, Idaho Association of Counties (IAC), with an update on county levies. All handouts will be available at the LSO. During the last meeting there had been a request for levy rates. The information collected for county levies came from the Idaho State Tax Commission. There are three funds where court expenditures will be paid from, the current expense, justice, and district court funds.

The summary shows the Net Taxable Value, the Approved Property Tax Value Budget, the Computed Levy, the Statutory Levy Limit and the Relationship to the Limit for each fund for each county. **Ms. Burke** noted that every county will have Current Expense and District Court Funds but not every county will have a Justice Fund. There are only 34 counties with a District Court Fund because others do not levy for property tax, they use the revenue from the court. **Co-chairman Senator Little** stated that they put general county revenue into the funds in addition to the APF. Is that correct? **Ms. Burke** agreed.

The statutes that are related to these funds and the language authorizing each fund are included in the handouts. The Current Expense Fund levy shall not exceed .26% of the market value. If the county establishes a Justice Fund, then the levy is reduced to .20% of market value. The statutes are pretty general about what can be paid from these funds so, in looking at the spread sheets, the

counties cannot be compared because they are not consistent in their expenditures. For instance, Bingham County puts the deputy clerk expenses in the District Court Fund while Ada County puts the deputy clerk expenses in the Current Expense Fund. This could be for historical or political reasons or just where the larger budget is. All funds must be viewed together. The survey that is being crafted will provide a more complete picture of all the funds and that will be presented at the next meeting.

Co-chairman Senator Little asked if all the spreadsheets could be totaled to provide the total income from all sources. **Ms. Burke** said that could be done recognizing that the Current Expense Fund is the general fund so it won't show what property tax is going to pay for the courts. **Co-chairman Senator Little** stated that the Justice and District Court Funds should be added together so they would be more accurate. **Ms. Burke** concurred.

Senator Werk would like to see a column on the spread sheet for the relationship on limits for property taxes. It would be valuable to see what percentage of the limit is being used. **Ms. Burke** said that could be done.

Senator Hammond asked if these property taxes fall under the total levy limits for property taxes that local agencies have to deal with. **Ms. Burke** answered that they do and the 3% cap has to be considered.

Representative Luker inquired if there is a survey to determine the amount of current expense budget that is allocated in each county for judicial purposes. **Ms. Burke** responded that the surveys show court expenditures and that can be compared with the budget. They can get that information for the committee.

Representative Killen asked if there could be a column showing revenues from other sources such as state, federal or cities. **Ms. Burke** stated that has been considered and those questions can be added to the survey.

Senator Corder referred to a previous amount for net costs of \$36 million and asked how that would compare to the \$50 million shown in Eric's analysis today? **Ms. Burke** said that the earlier number was from the Trial Court Financing Report from the court Web site and IAC concentrates on having all counties report and respond in the same way and the number **Mr. Milstead** used was the original attempts at collecting that data so the \$36 million is probably more refined and it will be even better for the next meeting.

Sixth speaker, **Dave Navarro**, Ada County Clerk noted that this committee gave the county and courts a directive to look at the collection of data, keeping in mind uniformity in reporting expenses and revenues related to court operations including, criminal and justice operations. The County and Courts Committee (Supreme Court and IAC) has drafted an annual questionnaire, a copy of which has been provided to the committee. **Mr. Navarro** will touch on the considerations and assumptions in designing the survey to make sure that it contains the information this committee would like to see.

The County and Courts Committee considered the following: some counties have justice funds and some do not; most counties budget revenue/expenses for county clerks in the General Fund and other operations in general or district court funds; and expenses for common services are found in various departments, i.e., prosecuting attorney, public defender, and district court.

The survey draft did not include numbers but showed the court fund balances, revenues, expenses, and definitions. There are 44 counties and they adopt budgets 44 different ways. The focus is on revenues and expenditures by type and not on the funds where they are recorded. **Mr. Navarro** reviewed the draft and provided information about the methodology. The reporting is by type and function, regardless of where it is recorded. The overall view of balances is shown first and then the backup of revenues, whether grants, property tax, or other and expense detail by function. This will be easier to gather data, be more consistent, and the information can be viewed in spreadsheet form providing any information required.

In summary, **Mr. Navarro** and **Ms. Tobias** will be attending the clerks' conference and will ask them to resubmit the information for 2007 in the new survey format as a pilot and expect those surveys to be back by the end of August and the data will be available for review at the next meeting. That format will be used for the annual questionnaires thereafter. Past information was not consistent, so this is an attempt to make it consistent.

Co-chairman Senator Little asked if the auditors reviewed the counties to see if they are only using a specific fund for what is statutorily designated to be paid out of that fund. **Mr. Navarro** stated that they do look at that as well as a number of other issues such as cash flows and if receipts are going to the proper fund. If the law is specific, the auditor tracks where the expenses are paid, but if it isn't specific, they will not necessarily see where the expenses are paid from.

Senator Hammond noted that several categories did not include contract services. How are those being accounted for? **Mr. Navarro** said that personnel costs and operation costs are specifically defined in the three functions; contract services would be captured in operational costs.

Senator Heinrich commented that this will be a great tool. Is it possible to ask for fund balances for the last five years in order to see a trend and how the counties are using their fund balances and if they are depleting or maintaining them? **Mr. Navarro** said they could do a history.

Representative Killen said it would be helpful at some point to peg this data to a benchmark of number of cases or caseload. Total dollars doesn't tell a whole lot unless the caseload is known. **Mr. Navarro** stated that would be possible but it is a whole different data set that is available. It would be hoped to leave this form the way it is and ask for that data and bring all of that to this committee so they could look at it. **Co-chairman Senator Little** said the caseload data is in the database that **Ms. Tobias** presented earlier, asking if it is available by court. **Ms. Tobias** agreed that once this data comes back from the counties, court caseload data can be added to the spreadsheet with some different calculations. **Representative Killen** asked if civil and criminal cases can be broken apart. **Ms. Tobias** said it can be broken down any number of ways. **Co-chairman Representative Clark** was concerned about the size of the spreadsheet.

Co-chairman Senator Little announced that the next meeting will be Monday, September 29th, at 9:30 a.m. The following items will be on the agenda:

- Survey with the additional collection information from **Ms. Tobias**;
- The 68% issue which is tied to the survey from Mr. Milstead;
- Levy information from **Ms. Burke**;
(Email to Mr. Milstead for distribution to Committee.)
- Per Capita Costs;
- Information from other states from various sources. **Ms. Tobias/Mr. Chadwick.**

Representative Luker looked at some broader issues. If there is a shift, would the courts take this money as a block grant and administer it or do something like what the schools are doing with an equalization fund and how would this be administered? Would we get input from the courts or where would that come from? Secondly, if property tax relief is the subject, how will this factor into the budget cap of 3%? **Co-chairman Representative Clark** said those issues will be dealt with eventually.

Senator Heinrich would like to see the levy limits addressed in those counties that are affected right now if changes are not made. Some of the counties need some type of relief. Also, the amounts distributed to the counties are proportionately less than those going to the judges and other things. When were those amounts originally fixed, has there ever been any adjustments for cost-of-living, and if that proportional discrepancy is because other things have been added on recently. **Co-chairman Senator Little** confirmed that **Senator Heinrich** was concerned about the different components of the fines and how they go out. **Ms. Tobias** will get a priority list. As far as inflation affecting amounts, whoever is the beneficiary will ask for an increase based on the inflation factor.

Senator Heinrich said his question referred to a portion of fines that go toward the judges' retirement; He said that amount is now \$10, established fairly recently, \$4 of which goes to the county, probably established many years ago. **Co-chairman Senator Little** stated that sum goes up by a percentage but flat fees do not increase. When **Ms. Tobias** sets the priority and sets the established date, it will be known when they were last changed. **Ms. Tobias** asked if that would answer his concern. **Senator Heinrich** responded that he didn't think so because regardless of when those fees were put into law has no correlation to what the priorities are, asking if that was correct. **Mr. Keller** said they do have a correlation. Priorities were made based on the statutes. If there was no priority, then it was set as they were created. **Ms. Tobias** volunteered to provide a statutory history of those changes over time. **Senator Heinrich** agreed that was what he wanted to see.

Representative Killen said that expenses and allocations have been talked about but nothing has been said about revenue. Will anything be discussed about funding any changes that may be made? **Co-chairman Clark** confirmed that will be discussed.

Co-chairman Senator Little adjourned the meeting at 1:05 p.m.