

MINUTES
JOINT MEETING

**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
SENATE JUDICIARY & RULES COMMITTEE**

DATE: Wednesday, January 23, 2013

TIME: 1:30 P.M.

PLACE: EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, Werk

ABSENT/
EXCUSED: Sen. Davis

GUESTS: Sr. Judge Barry Wood & Patti Tobias, Idaho Supreme Court (ISC); Fairy Hitchcock, Hitchcock Family Advocates; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Mike Kane, Idaho Sheriff's Association; Jan Sylvester

Chairman Wills called the meeting to order at 1:33 p.m.

Chairman Wills introduced the judicial system panel to the House and Senate Judiciary/Rules committees. He explained the purpose for this joint meeting was to provide background on the legislation these committees will see and said these panel members are also members of the Idaho Criminal Justice Commission, which acts as a sounding board for the issues surrounding law enforcement, corrections and the courts.

Patti Tobias, Idaho Supreme Court (ISC), welcomed both committees and thanked **Holly Koole**, Idaho Prosecuting Attorneys Association (IPAA), for putting this presentation together. She indicated that the purpose of the panel is to acquaint the committees with court processes and procedures in order to provide a big picture view of how all the pieces of the criminal justice system in Idaho operate. She concluded by saying that panel members were going to briefly explain their role in the system.

Sheriff Gary Raney, Ada County Sheriff, explained that each of the 42 counties in Idaho has an elected sheriff and when cities incorporate they have the option to form their own police services. **Jan Bennetts**, Chief of Staff for Ada County Prosecutors Office, said there are 44 county prosecutors for the state of Idaho, and there are 65 prosecutors in the Ada County Prosecuting Attorneys Office. **Tony Geddes**, Ada County Deputy Public Defender, indicated that there are approximately 8 county public defenders offices in Idaho, all other counties provide public defenders via contract with private attorneys. **Judge Barry Wood**, ISC, said there are 87 magistrate and 32 district judges in Idaho. He explained that a magistrate judge hears the initial matters in a case including the finding of probable cause. A district judge presides over the arraignment, trial and sentencing. **Brent Reinke**, Director of the Idaho Department of Corrections (IDOC), said there are 11 prisons in Idaho and IDOC manages 1 out of every 34 adult men and 1 out of every 156 adult women in the state. **Olivia Craven**, Director of the Parole Commission, said her agency's role was to conduct parole hearings; there is a staff of 31, eighteen hearing officers, who conduct investigations for a part-time commission and they meet monthly.

Ms. Koole said she planned to illustrate the process by taking a fictional felony criminal case from beginning to end. She then went through the facts of the "case." **Sheriff Raney** said law enforcement's first job is to preserve lives and then focus on 1) testimonial evidence, 2) physical evidence and 3) statements from the suspect interview. The sheriff will then submit everything to the prosecutor. **Ms. Bennetts** said the prosecutor's office sifts through the police reports to determine probable cause, and decide on the appropriate charges to file. She then would submit these documents to the magistrate judge, swear to the court and read enough of the compiled information to establish probable cause and keep the offender in custody. The offender is then read the charges and scheduled for a preliminary hearing. The court will then make a decision regarding bond, and whether to keep the accused in custody until the preliminary hearing. If the accused is in custody, preliminary hearing must occur within 14 days, and if not in custody, must occur within 21 days. The accused would then be bound over to District Court.

Mr. Geddes next explained that the public defender's (PD) office is assigned an accused person, he/she begins to develop a relationship with that person, advise him/her of his/her rights and begin to develop viable defenses. The main goal is to educate clients about the system and what they can expect. He indicated it is important to express to the client the seriousness of the situation. **Judge Wood** provided the point of view from the magistrate judge's perspective, the judge has to entertain a probable cause finding within 2 days. If probable cause is found, bond is issued, and defendants are scheduled for their initial appearance, which must happen within 24 hours. The defendant is read his/her rights which are explained at the preliminary hearing. If the magistrate does find there is probable cause, the defendant is bound over to district court. The public defender and prosecutor will then have the arraignment in district court. **Ms. Bennetts** explained that the defendant next decides whether or not to enter a plea or ask for more time. The public defender will usually ask for more time to talk with the client. Mr. Geddes emphasized that he advises his clients on the situation, the discovery that he has received from the state and the defendant must then decide to plead guilty or not guilty. If a plea of guilty is entered, then a presentence investigation is held and those findings are then submitted to the state to be used in sentencing.

In response to committee questions, **Judge Wood** explained that when the public defender and the prosecutor come up with a plea agreement, the judge is not required to follow it, but it is a good idea to create it in such a way that the judge will be bound by it. He next provided some details on the presentence investigation. The prosecutor, public defender, the judge and any affected victims are permitted to review it, but the document always remains confidential. Based on that report, the prosecutor and public defender will make a sentencing recommendation.

Judge Wood then referenced 3 Idaho statutes that govern sentencing in Idaho: **I.C. § 19-2521** (default sentence guidelines), **I.C. § 19-2601** (sentencing options) and **I.C. § 19-2513** (unified sentencing statute). He added that every felony sentence must have 2 parts: 1) fixed and 2) indeterminate portion, the combination of which must total the unified sentence.

Dir. Reinke outlined the flowchart he provided to the committee (see handout) that explains the process from the corrections point of view. He emphasized an addition made this year; the "Gain Core Presentence Investigation" which will provide IDOC with the opportunity to make a mental health evaluation much earlier in the process. In regards to specific sentences, there are 3 options: 1) community alternative placement program, 2) Rider or the 3) TC Rider.

Ms. Craven elaborated on the parole process and said the parole review is set 6 months before the inmate's parole eligibility day. At this meeting the hearing officer will meet with inmates and the Commission determines whether or not parole will be granted. If inmates do well on parole then they can eventually be discharged. She also said that if parolees violate their parole agreement, the problems can be treated or parole may be revoked, depending on the particular violation. She stated that 37% of parole violators have committed new felony crimes and emphasized that the parole board's central goal is to keep people in the least degree of incarceration possible.

Ms. Koole next briefly explained the process for appealing a conviction and reiterated that all of the factions represented by the panel remain involved throughout the criminal felony case, even when an offender is incarcerated.

Chairman Wills thanked the panel and explained a relaxed question and answer process for the remainder of the meeting.

In response to committee questions, **Mr. Reinke** explained that "TC" is "Therapeutic Community" and that is the longest retained jurisdiction option. **Ms. Bennetts** explained that a Grand Jury is used when there are vulnerable victims involved, such as in a child abuse case. **Judge Wood** added that Grand Jury usage varies across the state. The purpose of the Grand Jury proceeding is to determine if there is probable cause to charge the crime, but the Grand Jury does also have subpoena power for witnesses, if they feel that is necessary to make a determination of probable cause. In regards to a committee member question regarding the guilty plea agreement, it operates like this: state makes an offer to the defense based on their assessment of the seriousness of the offense and they communicate until they can reach an acceptable agreement. He said that generally, a judge is not obligated to accept a plea agreement with the exception of Rule 11, which allows the defendant to withdraw his/her guilty plea if the agreement is not accepted by the judge.

In regards to recidivism, **Ms. Tobias** said the system is getting better at communicating among agencies about recidivism. She said in recent years agencies have come together through the Idaho Criminal Justice Commission (ICJC), which has appointed a subcommittee to employ the "results first" model. The subcommittee is working with an economist to begin to understand the Idaho specific data and measure specific outcomes. **Dir. Reinke** added that the subcommittee is working the Pew Charitable Trust and other satellite states to study this. **Sheriff Raney** said there needs to be tools for agencies to use and emphasized there is a serious lack of mental health services in the corrections system.

Sen. Lodge thanked the panel and spoke about outlook for the future.

Chairman Wills said he feels it is very critical that we had the opportunity to learn about the CJC players and it is important to make decision in the committee that are based on knowledge of that system.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:43 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary