

MINUTES  
JOINT MEETING  
**SENATE JUDICIARY & RULES COMMITTEE**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, January 23, 2013

**TIME:** 1:30 P.M.

**PLACE:** EW 42

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

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

**ABSENT/  
EXCUSED:** Senator Davis

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

**Chairman Wills** explained the purpose for this joint meeting was to provide an overview of the criminal justice system and background on legislation these committees will see in the future. He 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.

**Patricia Tobias**, Administrative Director of the Courts, thanked the committees for coming together for this educational session. Ms. Tobias and Ms. Holly Koole, Legislative Counsel for the Idaho Prosecuting Attorneys Association, assembled a panel of experienced criminal justice professionals to help the committees understand how a felony case is investigated, prosecuted, defended, adjudicated, and sentenced in Idaho. A document on criminal proceedings and a glossary of legal terms was given to each senator and representative. (See Attachment 1) **Ms. Tobias** asked each panel member to introduce themselves and describe briefly their role in the criminal justice system. She said Ms. Koole will then set the stage for the felony case with a flow chart on the robbery case and each panel member will provide their part in each step along the criminal justice process.

**Gary Raney**, Ada County Sheriff, explained that early in the 1860s in Idaho, the powers were vested in the original thirteen counties and now there were 44 counties and 44 sheriffs to administer law enforcement. Some cities may elect to have their own police departments and tax their local citizens for that additional level of service. He said they work together with the Idaho State Police, particularly in rural Idaho.

**Jan Bennetts**, Chief of Staff for the Ada County Prosecutors Office, explained that just as there are 44 sheriffs, there are also 44 county prosecutors across the state of Idaho. Within their office, there are 64 lawyers and about 150 staff members.

**Tony Geddes**, Deputy Public Defender, said he has been with the Ada County Public Defenders Office about 17 years. There are eight public defender offices in the state of Idaho; areas without a public defender office have services rendered via contract. Ada County is the largest public defender office with about 44 or 45 attorneys and corresponding staff.

**Barry Wood**, retired District Judge of Idaho, said there were 87 magistrate judges and 42 district judges and as it relates to the exercise today, the division of work would be that the magistrate would entertain the initial matters in the criminal case and determination 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 one out of every 34 adult men and one out of every 156 adult women in the state. He said they had just over 8,000 incarcerated.

**Olivia Craven**, Director for the Parole Commission, said her agency's role was to conduct parole hearings. There is a staff of 31, with 18 hearing officers, who conduct investigations for a part-time commission that meets monthly.

**Ms. Koole** illustrated the criminal 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. Then they focus on: (1) testimonial evidence, (2) physical evidence, and (3) statements from the suspect's interview. The sheriff will then submit everything to the prosecutor. **Ms. Bennetts** said they would sift 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 to keep that person in custody until the preliminary hearing. After the reading of probable cause of this robbery case, they would be prepared to argue bond at the initial appearance where the offender is advised of his rights by the court and explained what he has been charged with. If the accused is in custody, preliminary hearing must occur within 14 days, and if not in custody, it must occur within 21 days. The accused would then be bound over to District Court.

**Mr. Geddes** next explained that the public defender's office is assigned an accused person; he/she begins to develop a relationship with that person, advise him/her of his/her rights and begins to develop viable defenses. The main goal is to educate the client 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 two days. If probable cause is found, bond is issued, and a defendant is 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. **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, 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.

**Judge Wood** explained that a change of plea before the district judge is really important. 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 would then order a presentence report. **Ms. Bennetts** explained that the presentence investigation takes quite a long time to gather all the information. She said it is a confidential document with sensitive information about the offender's background; such as criminal history, health issues, and mental health evaluations. Once they have reviewed the information, it is reviewed by the defense counsel and the defendant. In order to make a significant prison recommendation, all the evidence and supporting paperwork is needed. After the prosecutor's argument and recommendation, the defense counsel would make their argument.

**Mr. Geddes** said it was an extraordinarily important process for the defendant because the presentence report contains everything the judge is going to know about that person. You must advise your client that he has a right not to participate in that process. If the client has been to prison before and for a long time and anything he or she could say in the presentence report would be aggravating, then the advice would be to 'not' cooperate in that process, for it would only hurt them. On the other hand if there has been a bad childhood, drugs and alcohol involved, then the advice would be to be honest and participate in this process. Above all, if the decision is to plead guilty, and the defendant tells the presentence investigator and anyone else that he did nothing wrong, the client would appear to be without remorse.

**Judge Wood** referenced three statutes that govern sentencing in Idaho: Idaho Code § 19-2521 (default sentence guidelines), Idaho Code § 19-2601 (defines sentencing options) and Idaho Code § 19-2513 (unified sentencing statute). He added that every felony sentence has to have a unified sentence which consists of two parts: fixed, and indeterminate portion; the combination of which must total the unified sentence.

**Director Reinke** outlined the flowchart (Attachment 2) that explains the process from the correction's 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 three options:

- Community Alternative Placement Program (CAP)
- Traditional Rider (Cottonwood - education and programs)
- TC Rider (used if elements of violence are in the person's past)

The individual is incarcerated in accordance with the sentence. If the individual is retained by the court after the treatment program, they will stand before the judge and be on probation. They will be on parole after they have been in a term placement. The courts control probation and the parole commission controls the parole and IDOC controls the incarceration.

**Ms. Craven** elaborated on the parole process and said the parole review hearing is set six 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 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 percent 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** 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 asked for questions from the committee members.

In response to committee questions, **Mr. Reinke** explained that "TC" stands for Therapeutic Community and 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, and there is subpoena power for witnesses if necessary. In regards to another question regarding the guilty plea agreement, the state makes an offer to the defense based on their assessment of the seriousness of the offense; they communicate until they can reach an acceptable agreement. He said that 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 communication among agencies had improved. She said 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 understand Idaho specific data and measure specific outcomes. **Director Renke** added that the subcommittee is working with the Pew Charitable Trust and other satellite states for this study. **Sheriff Raney** said there needs to be tools for agencies to use and emphasized there was a serious lack of mental health services in the corrections system.

**Senator Lodge** thanked everyone for being here and thanks to Ms. Koole for putting this together in such a short time. She said it was very informative. There will be other adventures such as field trips for both these committees.

**ADJOURNED:** There being no further business, **Chairman Wills** adjourned the meeting at 2:43 p.m.

---

Senator Lodge  
Chairman

---

Leigh Hinds  
Secretary