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# JFAC COMMITTEE MEETING MINUTES

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2/4/13

The hearing was held in Room C310, Statehouse, commencing at 8:00 a.m. and concluding at 10:15 a.m. with Chairman Cameron presiding.

## **Roll Call:**

Senators: Cameron, Keough, Mortimer, Vick, Nuxoll, Johnson, Bayer, Thayn, Schmidt, Lacey

Representatives: Bolz, Eskridge, Thompson, Gibbs, Stevenson, Miller, Youngblood, Ringo, King

Excused: Bell

Staff present: Burns

Others Present: Scott Johnson, Department of Juvenile Corrections, and Colonel Brad Ritchie, Bureau of Homeland Security

## **STATE APPELLATE PUBLIC DEFENDER (SAPD)**

**Presenter: Sara B. Thomas, State Appellate Public Defender**

- ❖ Right to Counsel
  - The right to effective counsel in an appeal is guaranteed by the United State Constitution
  - The right to counsel in a post-conviction action is provided by Idaho statute; it is discretionary in felony cases and mandatory in capital cases
  - Idaho Code Section 19-868 created the SAPD. The cost of legal representation for indigent defendants on appeal “is an extraordinary burden on the counties...”
- ❖ Capital Crimes Defense Fund (CCDF) was created in 1998, Idaho Code 19-863A and a Joint Powers Agreement
  - To reduce the burden, to provide competent counsel, and to avoid paying high hourly rates to independent counsel
  - CCDF acts like an insurance program
    - Counties pay an annual premium based upon population
    - Counties pay a \$10,000 deductible per case and the fund covers the additional defense costs
    - 43 of 44 counties participate
    - CCDF is managed by a 7-member Board of Directors elected by the counties

- Counties that participate in the fund also receive the services of the SAPD as defined in Idaho Code Section 19-868, et.seq.
- ❖ SAPD staff – total of 22
  - Administrative (2 FTP)
  - Capital Litigation Unit (6 FTP)
  - Appellate Unit (14 FTP)
- ❖ Appellate Unit Case Types
  - Direct Appeals
    - An appeal from the felony conviction itself
    - Review of what occurred in court, on the record
    - General review of whether the district court did its job consistently with the law
  - Habeas Corpus Appeals
    - Generally limited to claims regarding conditions of confinement
  - Post-conviction Appeals (I.C. Section 19-4901, et. seq.)
    - Civil action in which the former defendant sues the State asserting specific errors
    - Allows the petitioner to provide evidence of things that occurred out of court and off the record
    - How a person asserts that they did not receive effective assistance of counsel
- ❖ Appellate Unit Caseload versus Workload
  - Caseload measures the number of cases opened by the SAPD within a given fiscal year. The opened date is the date the Notice of Appeal is filed.
    - FY 2010            571 cases
    - FY 2011            602 cases
    - FY 2012            664 cases
  - Workload measures the average weighted value of casework handled by an appellate unit attorney. The point value is assessed at the time the case is assigned, or when an additional brief is filed.
    - FY 2010            50.25
    - FY 2011            47.20
    - FY 2012            50.00
- ❖ Capital Unit Case Types
  - Post-conviction proceedings in District Court
    - Filing of a Petition for Relief
    - Investigation
    - Summary Dismissal proceedings
    - Evidentiary Hearing
  - Consolidated Appeal
    - Includes both the Direct Appeal and the Post-conviction Appeal
    - Interlocutory Appeals in Post-conviction (only had two cases in the last three years)
  - Capital cases in 2012

- Azad Abdullah – Consolidated Appeal
- Timothy Dunlap-Consolidated Appeal
- Erick Virgil Hall (I) – Summary Judgment Proceedings
- Michael Jauhola – Investigation/Conflict Review
- Darrell Payne – Investigation
- ❖ FY 2014 Governor’s recommended budget
  - Personnel costs \$1,758,800
  - Operating costs 313,700
  - Capital outlay 1,500
  - Total \$2,074,000
- ❖ Conflict and Contract Cases
  - Conflict Cases
    - SAPD is properly appointed
    - SAPD has a legal/ethical conflict such that the case must be assigned to an outside attorney for representation
  - Contract Cases
    - SAPD is properly appointed
    - SAPD could represent the appellant
    - There is not a Deputy SAPD available to take the case due to pending workloads
- ❖ Appellate unit costs in FY 2014
  - Want to transfer \$67,800 from operating to personnel to hire one full-time appellate attorney to allow SAPD to keep more cases in-house and reduce contract costs
  - Contract case cost is \$125 per hour
    - In FY 2012, SAPD paid \$92,008.50 in contract case costs
    - July - December 2012 the SAPD paid \$57,817 in contract costs
  - In-house average cost is \$42.72 per hour: includes all personnel costs
- ❖ Managing capital case costs
  - Needed funds for a capital case can change within a given fiscal year depending on the changing status of a case
  - Funds are requested when costs can reasonably be expected to be incurred during a given fiscal year
  - May occur in a standard budget request for operating funds or in a supplemental request depending upon when the status of the case changes
  - Supplemental budget funds provided for capital cases are reverted to the General Fund if not expended for a specific capital case during the requested fiscal year
  - Capital case expenditures
    - FY 2012 \$3,220.63 in investigative costs
    - FY 2013 to-date \$6,500.00 (estimated cost of depositions)
  - Capital Unit FY 2013 supplemental budget request is \$100,000
    - Jauhola v. State

- Possible conflict of interest discovered by SAPD
- District Court selected and appointed an attorney to review the case and determine if a conflict exists
- Estimated cost of conflict review is \$20,000 (original estimate was \$5,000, subsequent changes increased the projected cost by \$15,000)
- If conflict is found, client may waive conflict and keep SAPD as counsel and no conflict costs would be incurred
- Client may choose to not waive conflict and outside counsel will be hired to represent client at an estimated cost in FY13 of \$50,000
- If conflict is not found or conflict is waived, the case will be maintained by SAPD and conflict costs will not be incurred
- Hall v. State (Hall I)
  - Possible evidentiary hearing – awaiting District Court decision on summary dismissal
  - If hearing is granted on all issues, costs could be \$30,000 (\$24,000 in expert fees and \$6,000 in witness costs)
- Capital Unit costs in FY 2014
  - SAPD budget request does not currently include operating funds specifically designated for capital cases in FY 2014
  - When Hall II is decided by the Idaho Supreme Court, SAPD will have a better understanding of what is to occur in FY14 and the necessary costs – conflict review or investigation
  - Unsure of conflict costs for Jauhola in FY14 unless/until the potential conflict issue is resolved
  - FY 2014 budget request from the Governor is \$2,074,000
    - Personnel costs \$1,758,800
    - Operating costs 313,700
    - Capital outlay 1,500
    - Total \$2,074,000

## **DEPARTMENT OF JUVENILE CORRECTIONS (IDJC)**

**Presenter: Sharon Harrigfeld, Director**

- ❖ Introductions
  - Scott Johnson, Administrator of Administrative Services Division
  - Monty Prow, Project Manager
  - Sharon Burke, Substance Use Disorder Program Manager
  - Jessica Moncada, Quality Improvement Program Specialist
- ❖ History of Juvenile Justice in Idaho
  - In 1903 opened Industrial Training School in St. Anthony
  - In 1905 Idaho passed its first juvenile court statute
  - In 1955 Idaho passed the Youth Rehabilitation Act
  - In 1995 Idaho passed the Juvenile Corrections Act

- Based on a Balanced and Restorative Justice Model (emphasizes juvenile and parental accountability)
- In 1998 contracted with Chinn Planning to complete an assessment of the entire juvenile justice system – looking to future capacity needs
  - Identified county and state growth trends
  - Resources and problems with the juvenile justice system
  - Assessed state operations and facilities
  - Report recommended:
    - More community-based substance abuse and mental health services
    - An increase in detention beds and other services at the local level
  - Have received funding for the following with key partners in juvenile justice:
    - Community Incentive Project
    - Mental Health
    - Clinical Services Project
    - Substance Use Disorder Services
    - Changes in Judicial Rule 19
- ❖ Continuum of Care
  - Prevention
  - Intervention
  - Rehabilitation
  - Community Transition
  - Statistics
    - Last year there were 12,677 arrests of youth ages 10 to 17
    - Daily average of 5,000 juveniles on probation
    - 200 juveniles in detention facilities
- ❖ Behavioral Health Resources
  - Serve juveniles at the community level
  - Intervene early to address mental health and substance use disorder issues
  - Maximize positive outcomes
  - Evaluate results to ensure continuous system improvements
- ❖ Substance Use Disorder Services – Most recent program appropriated by the Legislature. Established four goals:
  - Provide juveniles access to treatment services
  - No waitlist
  - Focus on maximizing successful outcomes
  - Continue to evaluate the results and work toward continuous system improvement
- ❖ Juvenile Commitment
  - Those with highest risk are committed to one of three state institutions located in St. Anthony, Lewiston, and Nampa
    - House up to 240 juveniles

- Programming includes cognitive restructuring, drug and alcohol treatment, outdoor and various victim awareness activities, family and individual work, and service learning
- Juveniles assessed with moderate to low risk are served in contract provider placements
- Some juveniles are placed out of state because of specific needs, such as:
  - Developmental disabilities
  - Autism
  - Fetal Alcohol Syndrome
- Achievements
  - Increased reading and math scores
  - Awarded high school diplomas and GED certificates
  - Family participation and satisfaction
- Challenges
  - Lawsuit by some department employees is in the discovery process
  - Tort claim filed by former staff member in Canyon County
- ❖ Change in programs and workforce structure to meet juvenile treatment needs
  - Reclassified position to clinician with specific mental health experience
  - Changed structure of Observation and Assessment Unit
  - Reviewed all programming and treatment to eliminate redundancy
  - Strengthened case management and provided more training
- ❖ Three levels of quality improvement at IDJC
  - Minimum standards, assuring administrative rules, laws and regulations are followed
  - Operational standards (assists in monitoring and improving conditions and treatment services using national standards)
  - Outcome standards – Idaho has adopted effective interventions for high-risk offenders’ research to monitor IDJC facilities and larger contract facilities
- ❖ FY 2014 Governor’s budget recommendation
 

○ General Funds	\$37,462,900
○ Dedicated Funds	\$ 7,782,300
○ Federal Funds	<u>\$ 3,838,000</u>
• Total	\$49,083,200

**OFFICE OF THE GOVERNOR: Military Division**

**Presenter: Major General Gary Saylor, Adjutant General for the State of Idaho**

- ❖ Introduction of those in attendance:
  - Brig. General John Goodale, Assistant Adjutant General, Army
  - Brig. General Dick Turner, Director of the Joint Staff
  - Col. Brad Richy, Chief of the Bureau of Homeland Security(BHS)
  - Col. Don Blunck, Commander of the 116<sup>th</sup> Brigade

- Col. Jeffery Aebischer, Air Guard Chief of Staff
- CSM Ken Downing, Senior Enlisted Leader of the IDNG
- Master Sgt. Grant Settle, NCO of Year, Youth Challenge Graduate
- Nancy Gollaher, State Budget Analyst
- Paula Edmiston, Human Resource Manager
- Robert Wells, Special Assistant to the Director, BHS
- Robert Feeley, Public Affairs Officer, BHS
- ❖ Mission
  - Provide highly trained ready forces for state and federal missions – responsive to the needs of our nation, state, and community
  - Coordinate activities to protect against, prepare for, mitigate the effects of, respond to and recover from natural and technological hazards, and man-caused threats
  - Provide structured alternative education for at-risk youth
- ❖ Personnel Strength
  - Idaho National Guard continues to recruit quality soldiers and airmen
  - Army National Guard is at 103% of its authorized strength
  - Air National Guard is at 98% moving toward goal of 100%
  - Retention rates remain among the highest in the nation
  - Governor’s initiatives
    - “Hire One Vet”
    - Hero’s 2 Hire
  - Deployments
    - Soldiers from the 1-168<sup>th</sup> General Support Aviation Battalion are finishing deployment in Afghanistan – to return this month
    - Airmen from the 124<sup>th</sup> Civil Engineer Squadron just concluded a deployment in Afghanistan
    - 116<sup>th</sup> Cavalry Brigade will deploy soldiers in May 2013 to Cambodia for ANGKOR SENTINEL
    - Idaho Agriculture Development Team (ADT) will deploy soldiers and airmen to Afghanistan in October 2013
    - The 1-183<sup>rd</sup> Aviation Group will deploy personnel and equipment to Afghanistan in October 2014
  - 2012 Wildland Fire Support – mission was to coordinate state disaster response in support of local jurisdictions
    - Activated State Emergency Operations Center and Joint Operations Center
    - Established traffic control points to secure fire areas
    - Secured two FEMA Fire Management Assistance Grants (Trinity Ridge Fire and Kearny Fire)
  - Other missions
    - Funerals and Honors
      - Supported 1,388 funerals last year (about 115 per month)
    - Civil Search and Recovery (SAR)



- Through Air Force Rescue Coordination Center (AFRCC) the Army Aviation Group has been dispatched for civil search and rescue assistance throughout Idaho
- Participated in six search and recovery missions last year
- State Partnership Program (SPP) – Cambodia
  - 100% federally funded program links Idaho with Cambodia in support of the security cooperation objectives to preserve peace and stability in the region
  - SPP facilitates economic, commercial, social and cultural government interactions in addition to military-to-military expert exchanges
  - SPP builds strong Military-to-Military relationships and long-term personal relationships
  - Governor Otter is scheduled to stop in Cambodia on his trade mission in April 2013

### **JUDICIAL BRANCH: Idaho Judicial Council**

**Presenter: Jim Carlson, Executive Director**

- ❖ Judicial Council Membership
  - Seven permanent members and one adjunct member
    - Three permanent attorney members, one of whom is a district judge appointed by the Board of Commissioners of the Idaho State Bar
    - Three permanent non-attorney members appointed by the Governor with the consent of the Senate
    - Term of appointment is six years
    - Chief Justice is the seventh member and serves as Chairman
  - Current Council members:
    - Chief Justice Roger S. Burdick
    - J. Philip Reberger
    - Ronald M. Nate, Ph.D.
    - Steven A. Tuft
    - Joel Hazel
    - Elizabeth Chavez
    - Honorable Ronald J. Wilper, District Judge
    - Honorable Thomas H. Borresen, Adjunct Magistrate Member
- ❖ Duties of Judicial Council
  - Conduct studies for the improvement of the administration of justice
  - Make reports to the Supreme Court and Legislature
  - Submit to the Governor two to four names of qualified persons for each vacancy in the office of justice of the Supreme Court, judge of the court of appeals, or district judge
  - Recommend the removal, discipline and retirement of judicial officers
  - Other duties as assigned by law

- ❖ Process to select candidates
  - Notice given to all attorneys
  - Background investigation
    - Criminal
    - Credit Report
    - Idaho State Bar
    - Criminal Case Records Clerk
    - Idaho State Tax Commission
  - Surveys sent to all attorneys and are available to members of the public at each County Clerk's office
  - Personal interview by Idaho Judicial Council with every applicant
  - Forward the names of two to four candidates to the Governor
- ❖ 2012 Nominations by Judicial Council
 

Vacancy	# of Apps.	# Nominees	Individual Appointed
4 <sup>th</sup> Judicial Dist.	10	4	Melissa N. Moody
1 <sup>st</sup> Judicial Dist.	9	3	Barbara A. Buchanan
3 <sup>rd</sup> Judicial Dist.	7	2	George A. Southworth
- ❖ Other Information
  - Complaints received in 2012
    - 54 verified
    - 42 not verified
  - Requests for ethics opinions
    - In 2012, the Council responded to over 48 requests for ethics opinions from judges
  - Judicial performance evaluations
- ❖ Critical Needs
  - Interviews in Judicial Districts where vacancy exists
  - On-going funding for contested disciplinary cases
  - Judicial Performance Evaluation Program

## **JUDICIAL BRANCH**

**Presenter: Patricia (Patti) Tobias, Administrative Director of the Courts**

- ❖ Overview of Idaho Courts
  - 44 counties are divided into 7 judicial districts, each with a courthouse
  - Elected clerk of the District Court (and over 500 deputy court clerks) who are county-paid employees, file court documents, receipt fines, fees, and forfeitures, manage all court records and attend all sessions of court
  - At least one Magistrate Judge resides in every county and presides over challenging cases
    - Over 200,000 cases are resolved annually by 87 magistrate judges
  - District Judges are chambered in 19 of Idaho's 44 counties. They hear felony cases, complex civil and business cases, and appeals of decisions from Magistrate Judges

- One District Judge from each district serves as the Administrative Judge. The judge manages the district, makes case assignments, prepares state and county budgets and performs many other duties
- Retired senior judges hear cases in various counties on a part-time basis. Currently there are 55 senior judges where workloads are the greatest
- Each county has Family Court Services which act as a resource for parties divorcing or modifying child custody plans; services for protecting children during difficult court cases and tools to help judges resolve cases quickly for the children
- A Court Assistance Officer, Deputy Court Clerk or another contact who provides information and forms in civil and family law cases for those who want to represent themselves and cannot afford an attorney
- 34 counties have a Drug Court, Mental Health Court, Domestic Violence Court, or Veterans Court (called problem-solving courts). These courts provide cost-effective community-based sentencing alternatives to incarceration, reduce recidivism, and keep communities safe and save taxpayers money
- Over 400,000 cases are resolved annually in county courthouses
- All appeals from district courts, the Public Utilities Commission, and the Industrial Commission are filed with the Supreme Court and then heard by the Supreme Court or are assigned to the Court of Appeals.
- Appellate courts hear oral arguments
- ❖ Assessment and distribution of court costs, fees, and fines
  - Assessments are ordered by judges
  - Payments are processed by county court clerks
  - In FY 2011, almost \$50 million was collected and distributed to more than 200 entities:
    - \$5 million to the General Fund
    - \$21.3 million to other state entities
    - \$16.2 million to the counties
    - \$7 million to cities
    - Working to streamline collection efforts
  - Emergency Surcharge enacted when Court's budget was cut
    - Court wants to repeal the emergency surcharge June 2013 sunset provision rather than seek \$4.3 million from General Fund
- ❖ Funding Idaho Courts
  - State – appropriated \$49.5 million from General Fund
    - \$30.3 General Fund (65% is for judicial salaries)
    - \$17.4 Dedicated Funds (60% distributed to counties)
    - \$ 1.8 Federal Funds (60% distributed to counties)
  - County
    - \$23.5 Elected and Deputy Court Clerks
    - \$22.4 Misdemeanor and Juvenile Probation
    - \$19.1 Jurors, court security, interpreters, law clerks, and other Court Operations

- County government is required to provide suitable and adequate facilities as well as staff, supplies and other expenses of the district court and the magistrate division
- FY 2014 Governor's budget recommendation
  - General Fund \$31,819,900
  - Dedicated Funds \$17,859,400
  - Federal Funds \$ 2,072,900
    - Total \$51,752,200
  - Decision Units recommended by Governor
    - Court Facilities Planning Specialist \$122,200
    - District Judges & Court Reporters \$673,200
    - Drug/Mental Health Courts \$324,000
    - Magistrate Judges \$300,000
    - Domestic Violence Courts \$200,000
    - Family Court Services \$200,000
    - Judicial Council \$ 34,000
    - Guardian Ad Litem Training/Recruitment \$ 50,000
    - Guardian Ad Litem Interest Earnings \$ 3,700
    - Substance Abuse Provider Rate Increase \$275,900
- ❖ Plans for E-Court
  - Investing in technology to save money and improve services
  - In the future, court users will be able to complete most court business electronically -- in real time, online, 24/7 without going to the courthouse
  - Next year will present a detailed revenue, expense, cost-saving plans

**ADJOURNED**

Senator Dean L. Cameron, Chairman

Peggy Moyer, Secretary