

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 28, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Werk, Burgoyne and Johnson (Lodge 11)

ABSENT/ EXCUSED: None

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: **Vice Chairman Hagedorn** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of Sara B. Thomas as the State Appellate Public Defender to the floor with the recommendation that she be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Werk** moved to send the gubernatorial appointment of Gary Scheihing to the Commission on Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Judge Barry Wood** introduced the magistrate judges and gave an overview of the Administrative Office of the Courts (AOC) (see attachment 1). He spoke of the importance of continuing education for judges and noted that three educational trainings will be presented by the AOC.

Judge Michael Oths, Magistrate, 4th District, Ada County and President of the Idaho Magistrates Association, presented information about what cases Idaho magistrates handle and the number of filings seen this past year (see attachment 2).

Judge Debra Heise, Magistrate, 1st District, Bonner County, spoke on the Idaho Child Protection Act. She pointed out a typographical error which transposed IV to VI (see attachments 3 and 4). She explained how child safety referrals are received sending children into the protective custody of the State. Judges are required to hold a hearing within 48 hours of a child safety referral. Depending upon the situation, other requirements must be followed by the judges. If the judges are not compliant with these requirements under Title 4E the State loses federal money. Magistrates held 7,762 hearings statewide involving children.

Judge Heise explained the Court Appointed Special Advocates (CASA) and guardian ad litem (GALS) programs (see attachment 4). These are volunteers, and funding is provided from the public, Legislature and private work for training.

Judge Kent Merica, Magistrate, District 2, Nez Perce County, instructed the Committee on family law and family court services relating to domestic relations (see attachments 5 and 6). The courts are seeing a higher number of grandparents seeking guardianship for grandchildren. The courts are also seeing a lot of refiling of existing cases. The number of self-represented litigants has risen posing a challenge for the court. Issues are complex and self representation results in many people not being legally represented, and the court could not help out. The creation of the Court Assistance Office (CAO) and the Family Court Coordinators (FCC) helped assist litigants in filling out appropriate forms and helped them prepare for court. The FCC in all districts has established some core services including parenting classes and mediation that help both the family and the courts. The CAO and FCC helped those who are self represented to produce the correct pleadings and to have the case resolved in the magistrate court. This year the Idaho Supreme Court adopted the Family Law Rules of Civil Procedure. This effort brought all the rules of procedure that involve family law cases into one format, streamlined the process and provided sample forms of assistance for self-litigants. It also established timelines for discovery. This helps efficiently move cases through the system with the goal of having cases for a short amount of time and keeping them in magistrate court if possible.

Judge Dayo Onanubosi, Magistrate, District 3, Canyon County, reviewed the Idaho Juvenile Corrections Act, which laid out the legislative intent and policy of the State. The Southwest Juvenile Justice Center is now over a year old (see attachment 7). The judges understand they are dealing with juveniles not adults. There had to be cooperation and collaboration between those involved in the juveniles' lives. The number of juveniles housed by the State is at an all time low. **Judge Onanubosi** outlined the parents' responsibility in the program. This collaboration and cooperation passes along savings to the tax payers of the State.

Judge Rick Bollar, Magistrate, District 5, Minidoka County, presented information on domestic violence courts (DVC). The program began in 2002 in Ada County and with its success, by 2009 the Legislature adopted Idaho Code § 32-1408(3) (see attachment 8). Objectives of DVC were to provide for victim safety and offender accountability.

Judge Bollar described the components of cases primarily assigned to DVC. Cases involved domestic violence and its fallout. The Statewide Domestic Violence Court Coordinator is Amber Moe. **Judge Bollar** invited the Committee to read the Legislative Review given by Ms. Moe and the Idaho Supreme Court, particularly the part which discussed the Ada County Mentor Court. DVC functions in six of the seven judicial districts in Idaho, the second district doesn't have a DVC program.

Judge Rick Carnaroli, Magistrate, District 6, Bannock County, highlighted the criminal courts of Idaho. **Judge Carnaroli** described to the Committee the on call duty that was rotated in some districts (see attachment 9). On-call duty involved reviewing warrants, arraignment courts, walk-in applications for civil protection, orders in domestic violence cases and involuntary mental health commitments. On-call outside of the work day means any time of the day. Judges are called for search warrants, arrest warrants, and involuntary mental holds. On weekends the judge reviews any arrest paperwork and sets bail. Some weeks, 7 a.m. mental commitment hearings are held daily. Rural magistrates are on-call every day of the year.

Judge Carnaroli described the particulars of arraignment courts. These are where people are seeing a judge for the first time for both felony and misdemeanor offenses. Judges advise offenders of their rights and assign public defenders. Based on applications reviewed, judges could release offenders from jail, set supervision if needed and set bail. No contact orders are also issued when needed. Misdemeanor offenders can plead guilty at arraignment, and guilty pleas are taken after a determination that the offenders understand their rights.

Judge Carnaroli explained preliminary hearings were conducted by magistrates. Prosecutors are required to show that a crime was committed and probable cause that the accused committed the crime. Judges decide whether the case goes to district court. Magistrates are the first to see felony cases. **Judge Carnaroli** explained that pre-trial conference alternatives are for easily resolved misdemeanors. These cases are held in one courtroom with a public defender, prosecutor and private counsel. This is used to get cases through as quickly as possible, some days getting through 140-160 cases.

Judge Carnaroli expounded that jury trials occur when a settlement didn't happen. Misdemeanor jury trials are done in one day. If a jury was waived then there was a court trial. The judge decides guilt, innocence and sentencing. Infraction trials for contested speeding tickets are also provided for citizens. Sentencing and probation oversight is used by a judge through re-arraignment. Most dangerous and incorrigible offenders go to jail. The probation department serves a function in the process. When a parolee violates probation the judge sentences them to a fine or suspended jail or extends the probation. The longest probation allowed is two years. Felony cases found to be misdemeanors are sent back to the preliminary hearing judge to determine sentencing.

Judge Ryan Boyer, Magistrate, District 7, Bonneville County, spoke about the differences between a problem solving court and a regular court. The vast majority of the magistrate judges are problem solving court judges. Collaboration is the key to problem solving courts (see attachment 11). The specialty courts convened a group for a treatment team. These courts are for domestic violence, child protection, truancy courts and youth courts (see attachment 10). Youth court is a panel of youth who have juvenile offenders appear before them. They sentence the offenders to classes, written essays, probation, and service. If a juvenile follows the panel's guidelines and graduates from the program, the case is dismissed.

Not everyone is eligible for the problem solving court. Judges use the Level of Service Inventory (LSI) for adults and youth factors to determine who is sent to problem solving court. Judges use the standards and guidelines adopted by the Statewide Drug Court and Mental Health Court Coordinating Committees in deciding eligibility.

Senator Johnson (6) queried the Idaho Judicial Council about the number one complaint received. **Judge Oths** answered perceived rude behavior by judges.

Senator Johnson (6) questioned the greatest need of the courts. **Judge Heise** stated the need was for expanded training and trained volunteers for children. **Judge Wood** clarified the need for volunteers. By law a child 12 and under was required to have a volunteer independent advocate. There is a great need to find and train these volunteers.

Senator Johnson (6) asked when a child payment order was charged and DNA evidence later showed the male is not the father, could the charge be made administratively to change the order of payment. **Judge Merica** explained that the process involves both administrative action from Health and Welfare and judicial reversal of the determination order.

Senator Burgoyne spoke about self representation numbers increasing. **Judge Merica** clarified that cost is a huge issue in retaining a lawyer, so more accused people are representing themselves. The court is trying to set up a volunteer lawyer program and the program has helped some people. Legal Aid has more requests than they can handle.

Senator Johnson (11) complimented the group of judges in attendance and questioned if salaries of judges are in parity with private lawyers. **Judge Wood** replied that they are not in parity in most areas.

ADJOURNED: **Vice Chairman Hagedorn** thanked the judges for their work and attendance. There being no further business at this time, **Vice Chairman Hagedorn** adjourned the meeting at 2:55 p.m.

Senator Hagedorn

Vice Chairman

Carol Cornwall

Secretary

Barbara Lewis

Assistant Secretary