

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 30, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Bock (Burgoyne), and Nye

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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

INTRODUCTION: **Chairman Lodge** introduced Senator Bock who is sitting on the Committee in the absence of Senator Burgoyne.

PRESENTATION: **Magistrate Judges Review. Judge Barry Wood**, Senior District Judge, mentioned that he was a Page in the Senate 47 years ago and is pleased to be back, appearing before the Committee. He introduced Sara Thomas, Administrative Director of the Courts, and highlighted her background. **Judge Wood** explained that the Magistrates are here to present the important work of the Magistrate Court, and he reviewed the agenda.

Judge Wood explained the structure of the Courts (attachment 1, page 1). He gave the history of the court system in Idaho and its vested powers, detailing the hierarchy of courts, including the Appellate Courts (Supreme Court and Court of Appeals), the Trial Courts (District Court and Magistrate Court), indicating the number of judges in each court. **Judge Wood** explained that Supreme Court judges and Court of Appeals judges are elected statewide and must stand for election every six years. These judges serve staggered terms, and their elections can be contested. He indicated that District Court Judges serve four-year terms, and all are on the ballot at the same time. He related that the Magistrate Court judges do not have contested elections, but rather a retention system. These judges are appointed and serve four-year terms.

Judge Wood detailed the types of cases each court hears as follows:

- Supreme Court: appeals from District Court, all capital cases, Public Utility Commission cases, Tax Commission cases, and child protection cases.
- Court of Appeals: cases assigned by Supreme Court.
- District Court: felony cases, civil cases over \$10,000, appeals from Magistrate Court, County Commission cases, and administrative boards cases.

Judge Wood further explained the establishment of Magistrate Court in Idaho and provided a map identifying Idaho's Judicial Districts (attachment 1, page 2).

PRESENTATION: Magistrate Judges Overview. Judge Jayme Sullivan, Third Judicial District Magistrate Judge, identified herself as treasurer and secretary of the Magistrate Judicial Association. She explained that Magistrates are appointed by a District-specific magistrate commission consisting of one county commissioner, three mayors, two citizens who are appointed by the Governor, two lawyers who are appointed by the State Bar, the Administrative District Judge, and a magistrate from the district. **Judge Sullivan** listed the qualifications for a magistrate judge as being 30 years of age, a lawyer for at least 5 years, a citizen of the United States, a resident of Idaho, and in good standing with the bar for at least 2 years preceding the appointment.

Judge Sullivan indicated that the first 18 months is a probationary period, and the newly-appointed judge can be removed or sanctioned by the commission that appointed him/her. She pointed out that magistrate judges are subject to discipline by the Judicial Council, and are bound by the same ethical code. **Judge Sullivan** reported that Idaho has 91 magistrates with at least one in each county. She provided demographic information for the magistrate judges.

Senator Hagedorn asked for the purpose of the Magistrate Judicial Association. **Judge Sullivan** replied that the Association ensures that the magistrates serve the judiciary and each other, and serve well in dealing with issues facing the magistrates in their duties.

PRESENTATION: Pre-trial Release Reforms. Judge Michael Oths, Fourth Judicial District Magistrate Judge, specified that he hears only criminal cases for Ada County. He described the constitutional responsibility of identifying defects in the law, and to make the Legislature aware of areas that may need to be examined in order to recognize areas that need to be improved.

Judge Oths advised that in Ada County the judges are currently reviewing the makeup of the county jail population, and why they are incarcerated. He pointed out that Ada County is near the capacity limit. **Judge Oths** indicated that an analysis of each individual in the jail population is being conducted to identify how long the inmates are being incarcerated, why they were incarcerated, the amount of their bond, and how appropriate changes can be made. He detailed a pilot program that is being instituted to address this issue, as well as a study to consider amending the Idaho Constitution regarding who can be held without bail. **Judge Oths** related that the Arnold Pretrial Tool, a data-based method of evaluating offenders' level of threat to the community, is used to determine if they should be released prior to their trial. **Judge Oths** suggested Committee members attend the Denton Derrington Program, February 9 at 4:00, to hear the New Mexico Chief Justice as he speaks on pre-trial release reforms that have been instituted in his state.

Senator Davis asked if the results of the studies indicate statutory modification, or if making the desired changes falls within the inherent power of the Court. **Judge Oths** replied that both would be needed based on the change.

Senator Davis voiced a concern about the bonding, its purpose, and if the goal of bail is being met. He asked about the involvement of the Legislature in modifying the bail standard. **Judge Oths** responded the statutory bond amount is set by the Supreme Court and can be adjusted by the courts. The purpose of the bond is determined by the Legislature in Idaho Code.

Senator Bock asked, among the 1,000 inmates, how many were unable to post bond. **Judge Oths** replied that about 200 of the incarcerated population are on Idaho Department of Correction (IDOC) holds, so they cannot bond. Others are being held without bond having not yet been sentenced after pleading guilty to a felony charge. The other 800 have a substantial bond amount that is beyond their means. The United States and the Idaho Constitutions say there shall not be excessive bail. **Senator Bock** pointed out that bail is not set to support an industry. He asked what cases might be dropped or moderated to simplify the process and eliminate the need of bail. **Judge Oths** explained that there is a pilot program in Ada County wherein bail would be eliminated based on the level of threat to the community. Resources could be used to monitor these individuals rather than incarcerate them prior to trial. This allows them to work and support their families. If they do not meet the conditions of their release, they will be incarcerated until the trial.

Chairman Lodge announced that the next presenter, Judge Rick Carnaroli, has been honored by the City of Pocatello with the Human Rights Award for his work in human and civil rights.

PRESENTATION: Criminal Courts. Judge Rick Carnaroli, Sixth Judicial District Magistrate Judge, informed the Committee that he has been a magistrate judge for over 12 years in Pocatello, and that he also goes to Rigby as needed to cover criminal docket and family law cases.

Judge Carnaroli explained that all criminal cases begin in the magistrate courts. He pointed out that both search and arrest warrants start in the magistrate division when police or the prosecutor's office want to conduct a search or want blood drawn. All warrants are based on probable cause. The judges review the probable cause in order to issue the warrant.

Judge Carnaroli reported that in areas with more than one judge, the judges may rotate through the on-call duty. In rural areas there may be only one magistrate judge who must be on call at all times.

Judge Carnaroli indicated that Magistrate Courts handle felonies, misdemeanors, and infractions. He specified consequences for these offenses as incarceration in the State penitentiary for felonies, incarceration in the county jail for misdemeanors, and fixed monetary fines that require no jail time for infractions.

Judge Carnaroli provided the types of cases for each type of offense as follows, and detailing the process for dealing with them:

- Felonies, which include complaint review, first appearance, and preliminary hearings;
 - Misdemeanors, which include arraignment, pretrial proceedings, jury and bench trials, sentencing, and probation oversight;
 - Infractions, which include traffic offenses, animal control, and other in fractions;
- and
- Specialty Courts, which include drug courts and domestic violence courts.

Judge Carnaroli concluded by stating that magistrate judges see a lot of people and are focused on public safety. He feels the greatest outcome of these cases is seen when an offender changes his/her behavior and turns his/her life around.

Chairman Lodge inquired if animal control events occur mainly in cities rather than out in the counties. **Judge Carnaroli** replied that there is some State legislation on animal control issues, but these events are usually in cities.

PRESENTATION: Problem Solving Courts. Judge Ryan Boyer, Seventh Judicial District Magistrate Judge, emphasized that the purpose of Problem Solving Courts (PSC) is to change behavior. He shared the history of and the positive outcomes achieved by Idaho's PSC (attachment 2, page 1).

Judge Boyer declared that drugs and alcohol "drive the criminal offense train." He referred to the 80-80 rule stating that 80 percent of the crimes committed are in furtherance of addiction or under the influence of some level of addiction. **Judge Boyer** added that of that 80 percent of offenders, 80 percent have co-occurring disorders, i.e. disorders driven both by a mental health disorder and by a substance use disorder. He identified the three main groups of people who find themselves in trouble with the law: 1.) those whose use of alcohol and/or drugs affects their judgment; 2.) those who have mental health disorders, frequently undiagnosed, which cause poor judgment; and 3.) anti-social thinkers who basically think the law doesn't apply to them, and those who get caught are just stupid. PSC deal with the first two groups to help them to get treatment and change their behavior, thus reducing criminal offenses. **Judge Boyer** shared with the Committee the number and types of PSC in Idaho (attachment 2, page 1). In support of the success of PSC, he advised that 343 drug-free babies have been born of drug court participants and graduates.

Senator Hagedorn asked for the percentage of the people the magistrates see who go into specialty courts. **Judge Boyer** replied that finding a percentage is very difficult. He explained that the primary tool for evaluation is the Level of Service Inventory (LSI). If the probationer receives a specified score, a level of service is identified and the probationer is put in on an appropriate treatment plan. **Senator Hagedorn** requested more information regarding the number of cases and if that number has increased or decreased. **Judge Boyer** replied that statistics are hard to identify because of the differences in labeling. **Judge Boyer** voiced his perception that even with the increase in the general population, the jail population has not increased accordingly.

Senator Hagedorn asked if there is information on the recidivism rate annually, and what the trend appears to be for those who have been in problem solving court. **Judge Boyer** cited the report on Idaho's PSC, "Recent statewide outcome evaluations, addressing Idaho's . . . drug courts, highlighted a positive success rate in reducing both criminal recidivism and program failure when the appropriate high risk population is involved." Referring to this report, he pointed out statistical data regarding Senator Hagedorn's inquiry (appendix 2, page 1).

PRESENTATION: Domestic Violence. Judge Rick Bollar, Fifth Judicial District Magistrate Judge, shared the history of the Domestic Violence Courts (attachment 3, page 1). He stated that these courts deal with both civil and criminal cases, and offer treatment and programs that cause offenders to focus on employment, supporting their families, and addressing mental health and substance issues. Addressing these issues should ultimately keep the offenders out of jail. **Judge Bollar** explained the Domestic Violence Courts focus on family safety and offender accountability, and the purposes include enhancing victim safety and offender accountability; providing both civil and criminal case management, coordinating information for families with multiple cases, and using just one judge to process multiple cases involving the same family.

Judge Bollar enumerated the types of cases assigned to Domestic Violence Courts as civil cases; criminal cases (domestic assault, domestic battery, stalking, injury to child, violation of no contact orders, and violation of civil protection orders); and related cases including divorce, custody, and child support cases. **Judge Bollar** pointed out the Domestic Violence Courts' objectives are to provide a safe environment for families at risk; create coordinated responses to family

issues; and avoid separate judges providing different rulings which may be confusing and may have negative consequences for the family.

Judge Bollar discussed the organization, demographics, policies and guidelines of the Domestic Violence Courts, and he identified duties of the Courts. The duties of the Court Coordinators were also identified. **Judge Bollar** concluded by noting that reducing recidivism and providing safety for families are the commitments of the Domestic Violence Courts (attachment 3, pages 2-3).

PRESENTATION: Juvenile Justice. **Judge Bryan Murray**, Sixth Judicial District Magistrate Judge, detailed the specialty work of juvenile courts. He emphasized that juveniles are treated differently than adults because they are not adults. Their brains are still developing and juveniles need healthy adults to help them learn appropriate behaviors. **Judge Murray** informed the Committee that the states began developing juvenile courts in the late 1800s to treat juveniles differently than adults while they develop. Juveniles have all the rights adults do, except for the right to bail and jury trial. With juveniles swift justice is imperative in dealing with the consequences of their actions.

Judge Murray explained that in 1995 the Idaho Department of Juvenile Corrections (IDJC) was created, based on the three legs of restorative justice: 1.) Competency Development; 2.) Accountability; and 3.) Community Protection. He pointed out that this approach provides local control in helping juveniles succeed. The goal of IDJC and its community partners is to have 100 percent of the youth graduate from high school or get a general educational development (GED) certificate. **Judge Murray** enumerated benefits juveniles gain by graduating as it relates to making good choices. In addition to promoting high school graduation, he mentioned intervention methods being used, such as diversion programs for juveniles who are self-correcting or whose parents hold them accountable for their actions.

Judge Murray discussed juveniles who lack supervision, are born addicted to drugs, and whose homes encompass abuse, neglect, and household dysfunction (attachment 4, page 1). He observed that alcohol and drug use are of great concern. He emphasized the need to address these issues early. **Judge Murray** stated that IDJC has jurisdiction over parents. He explained the responsibilities required by parents of juveniles in the correction system, and he asserted that fulfilling these responsibilities builds strong families (attachment 4, page 1).

Judge Murray detailed the various aspects of maintaining juveniles in State custody including restitution, parental involvement, county duties, treatment, education, State controls, and release plans (attachment 4, page 2). Juveniles are committed to the custody of the State when parents do not cooperate and the community centered approach is not working. He shared the results of studies reviewing cross-over kids, or those who have been in the custody of the Department of Health and Welfare (DHW), who go on to the Juvenile Justice system, and who then enter the adult correction system as adults. **Judge Murray** emphasized the need to focus on the child not the crime, promote community service, and build competency to redirect troubled youth from lives of crime to becoming responsible citizens. He identified the following methods being used to get help for juveniles:

- Counseling and family services;
- Sex offender treatment;
- Aggression reduction treatment;
- Parenting programs;

- Mentor programs;
- Attendance court programs;
- Educational programs;
- Juvenile drug court;
- Family treatment drug court; and
- Parenting with Love and Limits program.

Judge Murray pointed out that funding comes from tobacco tax, lottery tax, county money, and grants. These funds are combined to provide the programs for juveniles in the correction system. He indicated that other sources are community entities, businesses, and school districts.

Senator Foreman asked how the reduction from misdemeanor to infraction has impacted juveniles' behavior. **Judge Murray** replied that he treats everything under the juvenile corrections act because it gives broad discretion. The change had not had an impact because youth with alcohol tickets were being assessed and assigned to diversion programs that fit each individual's needs. It is beneficial in the fact that juveniles and young adults will not have ongoing criminal records. He emphasized that the intervention work still needs to go forward. **Senator Foreman** commented that focus needs to be put on universities and the underage drinking that occurs. He felt this is a societal problem and should not rest solely with the courts. **Judge Murray** responded that there have been studies conducted that show a higher tax on alcohol yields a lower rate of underage consumption.

PRESENTATION: **Child Protection. Judge Anna Eckhart**, First Judicial District Magistrate Judge, explained the Child Protection Act, Idaho Code § 16-1601, which provides the framework for cases involving abused, neglected, or abandoned children. **Judge Eckhart** announced that in 2012 Idaho's child welfare system was ranked number one by the Foundation for Government Accountability (attachment 5, page 1). She explained the criteria for ranking the states including:

- How quickly they reacted to abuse allegations;
- Whether they made sure abused children were put in safe, permanent homes quickly;
- Whether foster care settings were supportive, safe, home-like and stable;
- Their work to reduce abuse and neglect.

Judge Eckhart also recognized Debra Alsaker-Burke, Idaho Child Protection Manager, who, in 2016, received the Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change.

Judge Eckhart outlined the process for conducting a child protection case (attachment 5, page 2) from the reporting of risk to a child from any person having a belief that a child is abused or neglected, through the disposition of the case which determines whether efforts should be made toward reunification or toward permanent placement outside the home. **Judge Eckhart** shared information regarding funding for children in foster care, guardians ad litem, and the use of citizen volunteers (attachment 5, page 2). She provided statistics related to child safety and child protection cases (attachment 5, page 3).

Judge Eckhart emphasized that "the core of child protection is to ensure that every child that should be in care is in care, but not a single child more; and to ensure that every child that is in care is in a safe nurturing placement that is supportive of the permanency plan for the child" (attachment 5, page 3).

PRESENTATION: Family Law (Guardian/Conservator). **Judge Kent Merica**, Second Judicial District Magistrate Judge, discussed family law, the Court Assistance Office (CAO), and the Guardianship and Conservatorship Committee (GC). He explained that the Coordinated Family Services (CFS) include Family Court Services (FCS), the CAO, and Domestic Violence, all which were established by Idaho Code Title 32, Chapter 14. The CFS provides coordination of the courts' involvement with families, and **Judge Merica** summarized the processes involved in this coordination (attachment 6, page 1). He noted that although he handles the complete spectrum of court cases, family law is the largest piece of his case load.

Judge Merica identified the seven core services provided by FCS, giving an overview of each one:

1. Co-Parent Education;
2. Supervised access for children to be with parents;
3. Mediation;
4. Civil intake screenings;
5. Pre-filing workshops;
6. Brief focused assessments; and
7. Parenting time evaluations (attachment 6, pages 1-2).

These core services were established by the Child and Families in the Courts Committee according to **Judge Merica** of which he is a member. He described the make up of this committee and the duties and tasks they perform in meeting the goals of the core services.

Judge Merica reviewed the role of the CAO indicating that over 57,000 people have used this service. The CAO provides access to the courts, resources, and legal information for self-represented litigants, detailing the applications of these tasks. He also remarked on the use of technology in the work of the CAO (appendix 6, page 2).

Judge Merica described the work of the CG, stating that its purpose is to encourage and enable people to lead independent, self-determined and community included lives. Until recently there were few of these cases, but now some of the most contentious cases he sees involve adult children contending with each other over the care of older parents and grandparents. This type of case increased from 7,997 in 2014 to 9,990 in 2016 (appendix 6, page 3).

Judge Merica reported the 2014 establishment of the Court Monitoring of Protected Persons (CMPP) project. He stated that under this project, every year conservators and guardians are required to report on the status of their wards, as well as on the status of their finances and assets. Evaluation of the CMPP affirm that the program provides needed resources, establishes consistency in case processing, gives assistance to the public, and improves the monitoring of cases (appendix 6, page 3). **Judge Merica** concluded by identifying other programs being used in various districts around the state.

ADJOURNMENT: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:08 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary