

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 01, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

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

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 meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:34 p.m.

GUBERNATORIAL APPOINTMENT HEARING: **Paula K. Garay, Reappointment to the Sexual Offender Management Board (SOMB).** **Paula K. Garay** informed the Committee that she has been serving juveniles and adults who sexually offend since 2002. She has served as a therapist, clinical director, and executive director in a residential setting. In 2015 she opened a private practice in Meridian. **Ms. Garay** stated that she became interested in SOMB when a position became available, feeling it important to have representation for cultural diversity in the population served.

Chairman Lodge asked Ms. Garay what work she is currently doing with SOMB. **Ms. Garay** replied that she makes sure rules and standards for treatment providers, assessors, and polygraph examiners take into consideration cultural differences of SOMB's clients.

Senator Lee requested that Ms. Garay identify a quality she brings to SOMB that will ensure there is representation for cultural differences. **Ms. Garay** explained that those working with offenders need to understand culturally based beliefs that could affect an offender's reaction to treatment. She shared that examples of such beliefs are seeking counseling being a dishonor to the family, maintaining eye contact being disrespectful, and having wide age differences between partners in a relationship. **Ms. Garay** emphasized the importance of being sensitive to differences in cultural norms, and of adjusting treatment practices accordingly.

Senator Davis inquired if Ms. Garay sometimes felt she had a conflict of interest. **Ms. Garay** responded that she did not perceive any conflict of interest between her former work in residential facilities, her current private practice, and serving on SOMB. **Senator Davis** asked if SOMB has a policy relating to conflicts of interest. **Ms. Garay** explained that although she can't quote it, there is a policy. She related that these concerns were discussed when SOMB was formed, and conflicts of interest were avoided. **Senator Davis** inquired if SOMB periodically reviews those policies and standards. **Ms. Garay** affirmed that they do as they meet monthly.

Senator Hagedorn expressed appreciation for her service on SOMB. He requested Ms. Garay's observations regarding changes since Justice Reinvestment (JRI) was enacted. **Ms. Garay** stated SOMB agrees with the

standards ensuring competence in providers and examiners. She added that the courts and the judges can now identify good evaluations and treatment programs. **Ms. Garay** declared that the JRI has increased the caliber of services provided.

Senator Bock requested procedures related to SOMB as it certifies people who are competent to test and provide evaluations. He asked if members of SOMB are directly involved with offenders. **Ms. Garay** replied that those interested in becoming treatment providers, polygraph examiners, or psycho-sexual evaluator submit an applications to SOMB. Subcommittees review those applications which include evaluation or treatment plans. SOMB considers the applications and requests additional information if necessary.

Chairman Lodge inquired what differences have been made since the addition of the polygraph expert to SOMB. **Ms. Garay** believed that meeting the goal to increase competence of polygraph examiners has been enhanced by the addition of the polygraph expert.

Chairman Lodge invited Ms. Garay to introduce others from SOMB. **Ms. Garay** noted that Kimberly Simmons, Karen Magneli, and Brenda Bauges were in attendance.

**GUBERNATORIAL
APPOINTMENT
HEARING:**

Debbie Field, Reappointment to the State Board of Correction (SBC).

Debbie Field, State Board of Correction, reported she has served on the SBC for two years and has seen some good things happen. She acknowledged the presence of her husband, of Henry Atenco, Director of the SBC, of Josh Tewalt, and of Sharon Harrigfeld, Director of Idaho Department of Juvenile Corrections.

Senator Davis noted Ms. Fields' legislative experience and asked how that has helped or hindered her in her work with the SBC. **Ms. Field** replied that it has helped to understand issues that bring inmates to the facilities. She asserted that taking away freedom is a loss. She noted that the people in the field have to decide how to deal with people who have lost their freedom. **Ms. Field** observed that the SBC must address the issue of returning these people to society. She encouraged the Committee members to visit the facilities.

Ms. Field reported to the Committee that Idaho was invited to learn about the Norway system. Previously the institution had been a warehouse system with serious rioting and violence problems. In commenting on the deprivation of freedom, one of the inmates stated he had been treated like an animal in a cage and he came out like an animal. **Ms. Field** explained that the difference with the Norway system was that it allowed people to be treated like human beings. Housing areas had calming colors and murals, and the inmates were able to purchase small items to help them have some connection to normalcy. Under the Norway system, inmates worked in a horse-supported agricultural atmosphere. They had to be at work on the land or caring for the horses, or in school. They worked hard to improve their lives and their skill set. She recounted some of the stories of the inmates. She pointed out that inmates who were repeat offenders and had been in warehousing type institutions wanted to be better citizens when they were released from Norway. **Ms. Field** emphasized that the goal of the SBC is to have Idaho's inmates have that outlook.

Senator Davis asked if legislators listen as she tries to influence public policy, and how things are different now that she is not in the Legislature. **Ms. Field** identified some ways to educate others concerning the needs of the Department of Correction such as holding SBC meetings at the facilities and talking to inmates. She commented that State employees and legislators understand the need to listen and learn, and then to act when appropriate. She pointed out that there are many emotions involved when working with incarcerated people, and those emotions need to be worked through in order to recognize facts and make changes.

Senator Nye complimented Ms. Field on her service. He asked Ms. Field for her insight into Pocatello's women's prison and how Norway can affect that. **Ms. Field** responded the Norway experience has shed light on the women's abuse, trauma, and elements of incarceration. She pointed out that education and learning skills are important in helping the girls and women change the future of whole families. In the Norway system and in a program for incarcerated girls in Baltimore, inmates were taught how to budget, to purchase and cook food, and other everyday skills. Many completed school and went on to college. **Ms. Field** asserted that the system should be more mentor friendly, i.e. those who were known as "guards" previously can be known as "contact officers" who act in the capacity of mentors.

Senator Hagedorn inquired how Idaho can replicate Norway's transition process from prison to the private sector. **Ms. Field** answered that the reentry process is a work in progress. She mentioned that work is being done to have more probation officers in order to work better with high-risk offenders. Focus is being put on building community connections along with teaching skills that will assist the inmates in their transition back to society.

PRESENTATION: **Idaho State Public Defense Commission. Kimberly J. Simmons**, Executive Director, Idaho State Public Defense Commission (PDC), advised the Committee that the PDC is committed to improving the delivery of trial-level indigent defense by serving the indigent defense providers of Idaho. She emphasized that one goal of the PDC is to ensure the safeguards of the Sixth Amendment to the United States Constitution and are met. **Ms. Simmons** mentioned the PDC's duties included collecting data, supporting compliance with standards, providing training, and administering grants to achieve fair and just representation of the accused.

Ms. Simmons gave a brief history of the PDC, stating that it was established in 2014 by the Idaho Public Defense Act (attachment 1) and was updated in 2016. She shared information regarding the make up of the PDC and its powers and duties (attachments 1 and 2).

Ms. Simmons stated that a study was done by the National Legal Aid and Defenders Association and the results came out in 2010. The survey showed deficiencies in Idaho's defense system. Those included flat fee contracts, lack of structural safeguards to permit independence related to flat fee contracts, and high case loads in the seven counties studied. Other deficiencies were lack of communication with attorneys and lack of confidential communication areas, inadequate investigation by the defense attorneys due to lack of resources, availability of investigators as well as lack of time due to high case loads. There was also a lack of performance standards for public defenders and a lack of adequate representation for children in juvenile court.

Senator Bock asked if there were areas where Ms. Simmons still saw deficiencies. **Ms. Simmons** indicated that many of the areas where there were deficiencies would be addressed in the Committee meeting on Monday, February 6, 2017. She stated that lack of resources continues to be an ongoing problem. Other areas were limited communication with attorneys and lack of confidential client communications, defense attorneys lack of speaking to their clients prior to court appearances, inadequate investigation of cases, excessive case loads, and flat fee contracts. **Senator Bock** asked what would happen if additional money was requested from the counties, for whatever reason, and the request was declined. **Ms. Simmons** responded that some counties are denying those requests. Funds come from different sources and there is no consistency. One of the issues that will be addressed is to put some standards in place regarding investigations and experts to achieve some consistency throughout counties.

Ms. Simmons discussed the Sixth Amendment Right to Counsel and talked about several cases using the Sixth Amendment in their defenses (attachment 1 and 2). The Supreme Court requires that all indigent defendants are to get a court-appointed attorney at public expense. Indigent defense providers are defined as the chief public defender in an in-house public defender office. Defending attorneys are any other attorney in the State of Idaho who is providing public defense services whether they are in-house or contracted with a county. The PDC has been given the task of providing continuing legal education programs for the State's indigent defense service providers. The Commission sponsored five different training programs in 2016 (attachment 3). **Ms. Simmons** indicated that HB 504 (2016) was created to improve the delivery of trial-level indigent defense services by providing funding and creating standards with which counties must comply. The powers and duties of Idaho Code § 19-850 are shown in (attachment 2).

Ms. Simmons went into detail about the Indigent Defense Grants and the appropriation of funds to provide counties with resources for indigent defense (attachment 4). She clarified the formula for the computation of indigent defense expenditures. The local share is based upon their expenditures. It is defined as the first three years of the last five fiscal years. For example, for Fiscal Year 2016, a counties local share would have been the median amount of the 2011, 2012, and 2013 budget (see Indigent Defense Expenditures found in attachment 2).

Senator Hagedorn asked why there were only 43 out of 44 counties that had applied for an Indigent Defense Grant. **Ms. Simmons** stated that Benewah County did not apply because they felt their public defense system was sufficiently funded. She indicated that she had encouraged Benewah County to apply in the future since they may need the money to comply with new standards.

Ms. Simmons indicated that she had visited 39 of 44 counties in the State of Idaho. A common concern was the increasing costs of providing public defense. Many of those involved expressed their concern about the permanence of the Indigent Defense Fund. They questioned whether the money would still be available year after year and were hesitant to hire people who they potentially wouldn't be able to retain. She gave her recommendations and asked for guidance from the Legislature for the upcoming year (attachment 2). **Ms. Simmons** concluded her presentation with the future goals for the PDC. She discussed the workload study being conducted by Boise State University (BSU) and the value it will bring the PDC. She stated that they would be promulgating additional rules in phases so as not to overload the counties with too many too quickly, to educate all of the stakeholders involved in this program, to continue to visit the counties, to train the defending attorneys and to define "extraordinary litigation costs."

Chairman Lodge recommended that the Committee go over the information provided and be prepared with their questions for Ms. Simmons when she returns to the Committee on Monday, February 6, 2017.

**PASSED THE
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Lee.

**DOCKET NO.
57-0101-1601**

Jon Burnam, Chairman Sexual Offender Management Board, stated that he had provided a complete copy of the proposed changes. One of the major changes is splitting the certification for post conviction sex offender polygraph examiners. Currently one was either certified or not. The rule would provide for two different levels of certified polygraph examiners either senior level or associate level approved. Schools have changed their criteria to allow for an associate level polygrapher. There is a change relating to the provisional level of certification proposing that the first 250 hours have face to face training and the remaining hours could be done at a supervision ratio. **Mr. Burnam** explained another area of change is in the number of hours one has to have face to face client practice. Individuals who have much experience in treatment or evaluation of offenders but who may not have practiced in the last three years were not being allowed to certify. To take into account the number of years they have previous to that period of time, it has been changed to a minimum of 500 hours in the previous three years rather than 1,500. A "Request for Conditional Waiver" would change the duration of that and establish new rules about the frequency in which a person might request that waiver. "Good Cause" may be changed to accommodate an instance of when a person may have requested a waiver, but became ill or had some other issue where they would have to exceed the one year mark. The language describing the difference between the senior level and associate level polygraph examiner is being changed but it is much the same as for treatment providers and evaluators. The requirements for graduating from polygraph school is a minimum of 40 hours, and the number of examinations that are successfully completed has changed. At the associate level they would be supervised as those exams are given and show their actual experience providing those exams. The number of continuing hours for the polygraphs is being reduced from 40 to 30. In "Considerations for the examiners" the wording "to be committed to community protection" and "to provide services in a manner that is ethical" is taken from the Polygraph Standards from the American Polygraph Association (APA). In "Certification periods and conditional waivers" the associate level post conviction sex offender polygraph examiner can only be at the associate level for two years; going beyond that will invalidate certification.

Senator Hagedorn asked how many people were involved in the negotiated rule making. **Mr. Burnam** indicated that he was not sure of the number, but it was everyone who was certified in the system.

Senator Davis was concerned about "or for good cause" and "or other extenuating circumstances." He felt that they were very arbitrary and would open the door for future litigation. **Senator Lee** stated that she was concerned about the appearance that the standards were being reduced. A discussion was held about their concerns.

Senator Hagedorn moved that these rules be held to the call of the chair so more discussion could be held. Motion was seconded by **Senator Anthon**. Motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Lee passed the gavel back to Chairman Lodge.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 3:10 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary