

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 22, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Foreman, Potts, 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 meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 P.M..

PRESENTATIONS: **Administrative Office of the Courts** by Honorable Senior Judge Barry Wood. **Judge Wood** introduced the magistrate judges conducting the presentations. He referenced the districts over which the magistrates preside. He explained what the magistrate judges are tasked with doing and remarked on the general agenda of the presentations.

Chairman Lodge requested questions to be presented at the time of each segment of the presentation.

Honorable Judge David Kress (Sixth Judicial District - Bannock and Caribou Counties) presented the **Guardianship and Monitoring Program** slide segment. He noted the overview of the program specifically noting cases of abuse in vulnerable adults and neglected or abused children/minors. He explained the strategies implemented to track such cases and their development. He commented on the causes and lack of resources resulting in 204 cases being erroneously closed. He remarked on the Pilot Project responsible for the reporting process. He noted how that process affected various system errors. He explained irregularities in management of the cases. He focused on the future processes and modifications in working with lawyers and training volunteers accordingly ensuring appropriate reporting to the courts.

Judge Kress emphasized the guardian monitors visiting and moderating each case ensures accuracy where abuse and neglect is noted. He commented on efforts of locating previous guardianships / conservatorships to ascertain if these individuals were still living.

Senator Hagedorn asked how the various cases are flagged to come before the judge. **Judge Kress** explained that the monitors aided in catching the various flagged cases. He noted that the flagged matters constituted roughly the ten percent statistic mentioned from the overall docket.

Senator Burgoyne mentioned formerly serving on the Guardianship and Conservatorship Committee with Senator Davis. He noted the monitoring component arose from the idea that the individuals in the program were vulnerable and needed some third party oversight to ensure their well being. He remarked the non-judicial personnel hired in each of the districts is intended so that the supervision factor is a matter of public policy in the State of Idaho.

Honorable Judge James Cawthon (Fourth Judicial District - Ada County) presented the **Malicious Harassment and Safety Plus Justice Challenge** segment. He noted that Ada County was selected among other partnering agencies to be participant in the joint challenge designed specifically to create smarter and more efficient jail usage. He commented on the accomplishments resulting from the successful phases of the challenge and noted the enhancement of police relations, quicker in-custody case processing, jail to community reintegration services, and upgrade of pre-trial processes, as well as revisions in court calendaring.

Judge Cawthon commented that the plan earned an Award from the MacArthur Foundation in 2017 which resulted in funds distributed of \$1,000,000 to the county. He elaborated on the phase three of the plan. He remarked on the frequent utilizers of Idaho prisons. He addressed the statewide crisis with the mental health and homeless jail population. He noted the Ada County facility reached capacity with the amount of prisoner beds.

Judge Cawthon spoke of the perception of the system from the jailed population perspective. He focused on improving the "notification" system as the majority of the population fails to show up when notified by phone. He commented on partnering with Pathways of Idaho Crisis Center.

Judge Cawthon emphasized that Idaho ranked in top ten among states for highest incarceration rates regarding the female population. He remarked on the listening tour idea and what might be learned. He noted Ada County was far below national average in minority and female disparity, however affirmed availability of data supporting it. He remarked that the racial disparity was linked to population increases. He noted how this results as a strain on the jail systems.

Judge Cawthon noted how placing case managers aided in case handling. He remarked on future goals in achieving quicker resolution of the cases. He noted that a 24/7 public defender access to the various jails was sought.

Honorable Judge Jayme Sullivan (Third Judicial District - Canyon County) presented the **Civil Protection Orders (CPOs) and related Orders** segment. She explained the definition of civil protection orders in various domestic violence crimes preventing contact of parties or those orders seeking prevention. She noted the types of hearings held to assist victims of domestic violence. She commented on the prevention of abuse in which these types of court orders aided. She noted the 2016 legislation changes intended to expand the protection broadened the definition of domestic violence crimes and the qualifying relationship.

Judge Sullivan explained the definition of domestic violence. She noted the change in legislation of 2016 effective as of July 2017. She discussed the expanded definition to malicious harassment, stalking in any degree and telephone harassment. She commented on the grounds for seeking civil protection orders in the new legislation.

Judge Sullivan noted the bench observed a significant increase in filings statewide. She explained this caused reallocation of resources and creation of new dockets, as well as the implementation of new procedures. She noted that the courts have been able to provide reasonable protection to Idahoans seeking protection from stalking.

Judge Sullivan remarked how the malicious harassment provision was

narrowly defined. She noted this caused few individuals to meet the preponderance of evidence for issuance of a protection order on these grounds. She addressed the telephone harassment grounds, serial texting, and anonymous / obscene calls. She remarked how the recent social media postings affected this statute under the harassment's broad scope of conduct in consideration by the courts. She concluded by noting the broad expansion in the language of the statute and it's effects on the current docket of courts in the state of Idaho.

DISCUSSION:

Vice Chairman Lee asked regarding unintended consequences and concerns with the statute for individuals who now have the remedy available before the courts. **Judge Sullivan** responded that the telephone harassment grounds before the courts in which judges are asked to consider broad scope of grievances among even wider broad scope of individuals may not have been the intent when the legislation was passed.

Senator Hagedorn asked regarding CPOs and implementation of Idaho Code § 1879-07 whether it was related to the reduction of personal crime such as domestic violence or assaults; and is the increase in CPOs protecting the citizens. **Judge Sullivan** responded that the legislation is under review if the goal is meeting the objective but the information is not available at this time.

Senator Lakey asked if telephonic harassment filings were on the rise and was this the area where CPOs were granted. **Judge Sullivan** responded that the information is not available statewide. She remarked that the telephone harassment is the majority of the filings on the increase due to the broadness of the language in the legislation. **Senator Lakey** expressed concern if there was merit to the judicial time spent on the CPOs. **Judge Sullivan** noted the complexity of the question may be met through dialogue of the Committee members who can make a decision if the legislation needs to be augmented.

Senator Burgoyne asked if during the drafting of the legislation, thought given to narrowing Idaho Code § 1867-10, so as to decrease the bulk of the case filings. **Judge Sullivan** noted the bulk filings in the telephone harassment cases were designed to be protected by the statute but were not necessarily there.

Senator Burgoyne asked, if the statute scope was narrowed, would there be a danger in eliminating useful legislation in the code. **Judge Sullivan** responded that number of case filings for telephone harassment under the criminal docket might affect the CPOs. **Senator Burgoyne** commented the statute can be amended so as to eliminate the malicious harassment provision. **Judge Sullivan** responded that might create a problem in prosecutorial discretion. **Senator Burgoyne** asked regarding time spent on CPO petitions in the area of malicious harassment. **Judge Sullivan** responded the cases may not be within the context of the intended legislation.

Vice Chairman Lee remarked the protection order application form available online lists telephone harassment as grounds which may be why the public is directed to file on such grounds.

Honorable Judge Wood commented on judicial resources regarding allocation of judges. He noted the problems of allocation of resources to the CPOs in prosecution of the telephone harassment. He affirmed the possibility that vast majority of court time spent is unwarranted. He remarked that time is required to fully study it's effects. **Senator Burgoyne** affirmed that if the legislation accomplishes nothing but to waste judicial resources, then the legislation needs to be carefully examined. **Senator Hagedorn** commented that the protection of the citizens outweighs the use of judicial resources. He noted that the legislation needs to be viewed differently.

Honorable Judge Kent Merica (Second Judicial District - Nez Percé County) presented the **Self-represented Litigants - Challenges & Successes** with Ms. Imelda Ramirez, Court Assistance Manager.

Judge Merica noted the importance of self-representation and access to the legal system. He introduced the program "Guide & File" designed to help individuals through the form filing labyrinth of the judicial system.

Ms. Ramirez provided an overview of the "Guide & File" utilizing court assistance iCourt software to file legal forms online without the assistance of an attorney. She noted the application was designed to guide an individual to file forms especially in rural distant areas of Idaho where physical access to courts was difficult.

Ms. Ramirez praised the application for it's simple navigation and compared it to TurboTax for court assistance. She noted the advantages of online questionnaires where forms are pre-populated and easier to utilize. She emphasized that the online system will also be available for individuals filing from the security of their homes. She remarked that expectably the future expansion of the application would be to include filings in minor guardianship, CPOs as well as divorce filings.

Vice Chairman Lee asked how court fees are extracted from the online processes. **Ms. Ramirez** responded the litigants pro se fees can be paid via credit card. She noted that in the future fee waivers will be applied to eligible litigants.

Judge Wood provided closing remarks and thanked the Committee. He added that a series of forms will be added to include victims of crimes and the recording of judgements as liens.

Chairman Lodge introduced intern **Chloe McClintick**. Ms. McClintick provided a brief explanation to her background and current education at Concordia University School of Law as a second-year law student.

ADJOURNED:

Chairman Lodge adjourned the meeting at 3:47 P.M..

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary