

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 28, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Senators Lodge, Thayn, Cheatham, Burgoyne, and Nye

ABSENT/ EXCUSED: Vice Chairman Lee, Senators Anthon and Grow

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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:33 p.m.

GUBERNATORIAL APPOINTMENT VOTES: **Senator Lodge** moved to send the Gubernatorial appointment of Monty Prow as Director of the Department of Juvenile Corrections to the floor with recommendation that he be confirmed by the Senate. **Senator Cheatham** seconded the motion. The motion carried by **voice vote**.

Senator Nye moved to send the Gubernatorial appointment of Melinda Smyser as the Administrator of the Office of Drug Policy to the floor with recommendation that she be confirmed by the Senate. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Annual Update Regarding Idaho Department of Corrections.** Josh Tewalt, Director, Idaho Department of Corrections, presented the annual update. **Mr. Tewalt** stated the agency has three issues of primary concern: staff shortages, prison capacity, and community outcomes. In 2018, probation and parole officers had a 23 percent staff turnover rate. All correctional security staff in prisons and facilities was over 18 percent turnover. Those numbers translate into overtime, creating a difficult work environment.

Mr. Tewalt reported that one of the reasons turnover has taken place is compensation. The Governor's budget recommendation helps address the situation with additional resources for wages. The Change in Employee Compensation Committee report will also assist in more competitive compensation. Another turnover issue is tolerance threshold - being willing to put up with certain behavior for certain compensation. There is a responsibility as an agency to ensure the staff feel valued.

Mr. Tewalt stated that the Idaho Department of Corrections has a safe operating capacity of 7,250 beds. When combined with Correctional Alternative Placement Program, a privately operated prison managed by Management and Training Corporation, that number grows to 7,680 beds. Every inmate over that amount must be housed in county jails or one of the private facilities contracted through the GEO Group in Texas. Those facilities, Karnes County and Eagle Pass Correctional Facility, currently hold 700 inmates. The Department of Corrections was approved to open a community reentry center in Twin Falls, an expansion of the St. Anthony work camp in eastern Idaho, as well as a new community reentry center in Post Falls. Those three facilities will create 400 additional beds.

Mr. Tewalt informed the Committee that 75 percent of those entering the system have failed on felony supervision, either probation or parole, or failed a retained jurisdiction program. Efforts to improve outcomes in the community hinge not just on those tasked with supervision, but also on ensuring they have the tools to keep those on felony supervision engaged in their recovery. The Governor's budget includes resources to provide more supervision by adding 17 additional staff for probation and parole. The community supervision population has risen to over 16,700 on felony supervision. Additionally, the Governor is recommending an increase to support additional tools for our probation and parole officers. Electronic monitoring is an effective tool not only to sanction offenders who may be heading towards recidivism, but also to keep others meaningfully engaged in their supervision.

DISCUSSION: **Senator Burgoyne** questioned what the typical workload might be in regard to probation and parole cases. **Mr. Tewalt** responded that as a general rule for high risk individuals, they would like to see 50 cases at maximum. With high moderates, around 50, and as they move into level one and two classification, those numbers are able to grow. **Chairman Lakey** thanked Mr. Tewalt for his presentation.

PRESENTATION: **Judge Barry Wood**, Senior District Judge, Administrative Office of the Courts, stated that as a Senior District Judge, he currently serves as the Deputy Administrative Director of the Courts. **Judge Wood** explained that he served as a magistrate judge from 1987 to 1994. The magistrate court is a division of the district court. The combination of the district courts and magistrate courts is what is referred to as trial courts, as opposed to the appellate courts, which is the Court of Appeals and the Supreme Court. Idaho currently has 93 magistrate judges and by the end of the legislative session they hope to have 95 (attachment 1).

PRESENTATION: **Judge James Cawthorn**, Ada County, Fourth Judicial District, relayed to the Committee that as a magistrate judge in Ada County, he focuses on pretrial justice, the period in a criminal case between arrest and disposition. The main concern is protecting the community and victims, and protecting and insuring constitutional rights. In the beginning, only eight counties had representation at the initial arraignment. Through additional funding, there are now 41 counties providing representation. In 2014, only 18 counties provided any type of pretrial services; in 2019, that number is now 31 (see attachment 1).

PRESENTATION: **Judge Jayme Sullivan**, Canyon County, Third Judicial District, explained that she is one of nine magistrate judges in Canyon County and has been serving as a magistrate for almost seven years. She is also the President of the Idaho Magistrate Judges Association and her presentation focused on civil protection orders. Civil protection orders are written court orders that prohibit violent or harassing behavior, designed to protect individuals and families from perpetrators. In 1988 Idaho passed the Domestic Violence Crime Prevention Act which expanded the ability of the courts to provide a legal means for victims to prevent future abuse. In 2016 the legislature expanded who could apply for a protection order and on what grounds. A petitioner no longer needed a qualifying relationship and a protection order could be issued upon a preponderance of evidence. The number of filings increased statewide from an average of 4,500 to almost 8,000 (see attachment 1)

DISCUSSION: **Senator Burgoyne** questioned if the courts felt it necessary to sanction frivolous petitions. **Judge Sullivan** stated that policy questions were best left to the legislature, and judges were not sanctioning those types of petitions. **Chairman Lakey** pointed out that expanding who could apply for a protection order, and on what grounds, was intended to provide protection. He asked how they could make sure they were meritorious filings, versus frivolous filings. **Judge Sullivan** informed them there has been a committee from the courts working with Senator Burgoyne to tighten the language. **Chairman Lakey** inquired if in her experience she had seen firearm restrictions as a condition of probation in misdemeanor domestic violence cases. **Judge Sullivan** responded she could not say as it is covered under federal statute.

PRESENTATION: **Judge Victoria Olds**, Lewis County, Second Judicial District, stated she is from Nez Perce, Idaho, but travels to Lewiston and Latah counties also. She handles child protection and juvenile cases, as well as general magistrate cases, but her presentation would cover the impact of amended penalty provisions. **Judge Olds** explained that infractions are civil penalties, there is no incarceration, no ability to arrest, but the process is similar to a misdemeanor so criminal rules of evidence apply. In July 2018, driving without privileges became infractions. Those infractions had a \$150 fine with court costs. The second infraction in five years had a \$300 fine with court costs. The third one in five years became a misdemeanor. Currently there is no license suspension for failure to pay infraction fines. They are no longer able to enforce payment of infractions, and the tax intercept is no longer available (see attachment 1).

PRESENTATION: **Judge David Kress**, Bannock and Caribou County, Sixth Judicial District, gave his presentation on the 2017 statewide implementation of the guardianship and monitoring program. He explained that guardianship cases came in three different types: incapacitated adults, minors that need guardians, and developmentally delayed adults. Incapacitated adults are usually aging people that are having incapacity. Minors need guardians when their parents cannot provide a stable environment, their rights have been terminated, or there is abuse, neglect, or abandonment. Developmentally delayed adults are cases where they had a disability prior to the age of 18, but now have no one to make decisions for them. **Judge Kress** stressed that guardianship is a powerful tool bringing needed protection, but also removes fundamental rights, putting a vulnerable person at risk of abuse, neglect, and exploitation. Guardianship monitoring by the courts is critical to identify abuses and ensure the welfare of vulnerable adults (see attachment 1).

Chairman Lakey thanked all the magistrates for the work they do, and for taking the time to come and speak to the Committee.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:58 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Machele Hamilton
Assistant Secretary