

MINUTES  
JOINT MEETING

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE  
SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, January 29, 2020

**TIME:** 1:30 P.M.

**PLACE:** Lincoln Auditorium WW02

**MEMBERS:** Chairman Chaney, Acting Vice Chairman Monks, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, Nye

**ABSENT/  
EXCUSED:** Representative Goesling

**GUESTS:** The sign-in sheets will be retained with the minutes in the Committee secretary's office until the end of the session. Following the end of the session, the sign-in sheets will be filed with the minutes in the Legislative Services Library.

**Chairman Lakey** called the meeting to order at 1:30 p.m.

**Rekesh Mohan**, Director Office of Performance Evaluations, introduced the team who worked on the analysis of the state's correctional system and its capacity. He stated the analysis shows that inadequate planning over the past decade is the contributing cause of many of the problems faced by the Idaho Department of Correction (IDOC).

**Lance McCleve**, Team Lead, Office of Performance Evaluations, provided an overview of the evaluation, but focused on growth and forecasting. He explained the reasons for prison population growth are complex. However, growth factors are related to increasing term admissions from parole revocations; inmate releases not keeping pace with inmate population; and new term commitments increasing faster than the Idaho population. It is recommended IDOC develop a long-term forecast.

**Casey Petti**, Office of Performance Evaluations, provided a statistical overview and update on facility condition and capacity issues. He explained over half the housing units in Idaho do not meet standards because of overcrowding. They also are outdated so they limit efficient, continuous observation of inmates. This is a safety issue for staff and inmates. It also impacts the ability to offer programs that can support rehabilitation. It is recommended IDOC do a facility condition assessment.

**Suzie Bursheron**, Office of Performance Evaluations, discussed alternative housing options and explained the cost differences of housing inmates at IDOC prisons, out-of-state facilities and county jails. She stated the cost of constructing a new prison is projected to save the State money over the long-term because it would lower daily operational costs, which could offset construction costs.

**Bob Thomas** consulted with the Office of Performance Evaluations. He explained many of the issues that were identified in the evaluation 10 years ago have been addressed. However, it is still recommended the department conduct a staffing analysis and work with outside organizations to create a staffing model.

In answer to questions from the Committee, **Mr. Lance** stated the cost comparisons for housing inmates in various types of state, out-of-state and county facilities are the fully load costs and not the per diem reimbursement rates allowed by statute. He clarified that most of the services provided to inmates in counties are handled by the department including medical care. He stated the cost comparisons do not include consideration for Medicaid expansion.

**Chairman Lakey** turned the gavel over to **Vice Chairman Lee** to conduct the rules review.

**DOCKET NO.  
06-0000-1900:**

**Josh Tewalt**, Director, Idaho Department of Correction, presented the Omnibus docket where five chapters were consolidated into four and 18 pages were removed to eliminate repetitive language. Most of the changes were not substantive. He explained most public concern has been focused on the section related to executions. The department recognizes there are many shared interests in making sure the integrity of the process is maintained. He stated there is a clearly defined process for how executions are handled, including testing the drug compounds used in lethal injections. He stated those procedures are available for public review. The board went to extra lengths to reduce the list of topics that would be exempt from public disclosure.

**DOCKET NO.  
06-0202-1901:**

In discussing this docket, **Mr. Tewalt** stated the changes related to the rules governing release readiness were non-substantive and focused on the removal of unnecessary definitions and clean up.

**Vice Chairman Lee** directed **Mr. Tewalt** and the Committee to consider **Docket No. 06-0000-1900**.

In answer to Committee questions, **Karen Magnelli**, Deputy Attorney General explained that I.C. 75-105.4.a.i. is the statutory basis for the IDOC's disclosure rules relating to executions.

**Mr. Tewalt** addressed additional questions from the Committee regarding the state's pending litigation regarding disclosure and execution drugs, and the reasons for implementing the rule changes at this point in time. He explained the department took many things into consideration, including the controversies surrounding the efficacy of execution drugs in other states, the current environment, the department's highest commitment to maintaining an integrous process.

**Aliza Cover**, Law Professor at University of Idaho testified on behalf of herself and not the university. She stated she is a petitioner in a public records law suit seeking to obtain information from the IDOC. She spoke **in opposition** to the docket as it relates to non-disclosure of execution related information because it undermines democratic participation and public confidence in a matter of high public concern. She explained that public execution policy is supported by the people of Idaho through a democratic process, therefore the people of Idaho have the right to know whether the process is done in a transparent, humane and dignified way. She stated public disclosure can ensure accountability.

In answer to questions from the Committee, **Ms. Cover** stated that regardless of public criticism, secrecy creates many other issues far beyond the risk of discouraging companies from providing drugs for lethal injections.

**Kathy Griesmeyer**, Policy Director, for ACLU of Idaho, spoke **in opposition** to section **06.02.02.135.05.b.** of the docket. Ms Griesmeyer's testimony addressed similar concerns voiced by **Ms. Cover**, but she spoke specifically to recent district court findings against the IDOC regarding public disclosures involving past execution cases. She also stated the department's proposed non-disclosure rules will jeopardize the State's contractual integrity. It increases the risk for future litigation by instituting secrecy rules that make it difficult for pharmaceutical companies to monitor the supply chain for the misuse of drugs that have been restricted against use in executions. She explained that several large federally regulated pharmaceutical companies have communicated with the department regarding the prohibited use of their products in lethal injections. She stated transparency across the supply chain is important to protect public health and the commercial interest of health companies.

In answer to questions from the Committee, **Ms. Griesmeyer** stated it isn't the expertise or role of the ACLU to provide a list of acceptable pharmaceuticals for lethal injections that could withstand ACLU litigation. Instead, the ACLU is committed to holding the IDOC accountable by not allowing its practices to be done in secrecy. She also explained chemical compounds used in capitol punishment cases should be obtained both legally and transparently.

**Ken Burgess**, on behalf of the Idaho Press Club, spoke **in opposition** to any action that limits public access. He stated as long as the state uses execution as a punishment then all actions related to that should be transparent. He also explained concerns about this setting precedent on other issues of public concern.

**Mr. Tewalt** responded to the testimony by stating the execution drugs are lawfully acquired.

**Vice Chairman Lee** returned the gavel to **Chairman Lakey** to close the meeting. He explained the Senate and House Committees will return to their own meeting rooms to consider the dockets.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:46 p.m.

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Representative Chaney  
Chair

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Wendy Carver-Herbert  
Secretary