

MINUTES  
JOINT MEETING  
**SENATE JUDICIARY & RULES COMMITTEE**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

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

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

**PLACE:** Lincoln Auditorium

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, Nye

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

**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 Lakey** called the meeting of the Senate Judiciary and Rules Committee and the House Judiciary Rules and Administration Committee (Committees) to order at 1:30 p.m.

**PRESENTATION:** **Rakesh Mohan**, Director, Office of Performance Evaluations (OPE), State of Idaho, introduced the team members presenting and stated they would be discussing "Managing Correctional Capacity" (see Attachment 1).

**Lance McCleve** explained that Idaho's population has exceeded the housing capacity in Idaho prisons. Three contributing factors are 1.) term admissions resulting from parole revocation has increased; 2.) inmate releases have not kept pace with inmate population growth; and 3.) new term commitments have increased faster than Idaho's population growth. He stated that it is important to determine what the growth drivers are and have a forecasting process that is continually updating anticipated needs.

**Casey Petti** discussed the changes in the correctional facilities in the past ten years. With the increase in the number of inmates, additional stress is placed on functional facilities and on the staff, and safety becomes an issue. Deferred maintenance has increased by 45 percent. The recommendation was that the department should work with a facility management organization to conduct an assessment of the prisons.

**Susie Bergeron** spoke about alternative housing for inmates. In 2018 an urgent need for additional beds caused prisoners to be sent out-of-state. The prisoners were not monitored as closely, and educational and vocational opportunities, family visitation, and paid work opportunities were lost. Studies show that constructing a new prison is the most cost effective option available.

**Bob Thomas** stated that many variables have contributed to problems that were outside of prison administration control. The ability to staff prisons for appropriate safety and security was stretched to its limits. The recommendation given to the Department of Correction was to work with professional correction organizations to identify an outside, independent consultant who can conduct a staffing analysis and produce a staffing model.

**Senator Burgoyne** and **Representative Monks** questioned what costs were included in the cost of housing an inmate. **Mr. McCleve** stated that he would prepare a report breaking out the costs. He indicated that Medicaid expansion was not included since most medical services are provided by the Department of Corrections during incarceration.

**PASSED THE GAVEL:**

Chairman Lakey passed the gavel to Vice Chairman Lee for docket consideration.

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

**Josh Tewalt**, Director, Department of Correction, indicated that changes in **Docket No. 06-0000-1900** were mostly non-substantive. He stated that he was aware of the concerns relating to the execution portion of the docket and assured the Committees that he wanted the execution process to be covered with integrity. He emphasized that the changes in that portion of the docket were a board decision and were made in a public meeting. **Director Tewalt** reiterated that there is a clearly defined process for executions, including the drug compounds used in lethal injections. The procedures are available to the public for review.

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

**Josh Tewalt**, Director, Department of Correction, stated that the changes in **Docket No. 06-0202-1901** relating to release readiness were non-substantive and focused on cleanup and unnecessary definitions.

**DISCUSSION:**

In answer to questions from the Committees **Deputy Attorney General Karen Magnelli** said there is a statutory requirement for the Idaho Department of Corrections to disclose certain information applying to executions. **Director Tewalt** responded that there is focus on this area of the docket because it relates to the circumstances surrounding executions. He is committed to carrying out Idaho executions in the most humane way possible while respecting everyone involved. **Director Tewalt** answered a question relating to current litigation and indicated that there is ongoing pending litigation.

**TESTIMONY:**

**Aliza Cover**, Law Professor, University of Idaho, testified in opposition to **Docket No. 06-0000-1900**. She clarified that she was testifying on behalf of herself and not the University of Idaho. She indicated that she was involved in an ongoing lawsuit with the Idaho Department of Correction. **Ms. Cover** gave three reasons for her opposition: 1.) it undermines democratic participation on matters of public concern; 2.) it increases concerns about botched or painful executions; and 3.) it undermines the need for accountability for those carrying out the law. She stated that when an execution is carried out, it is in the name of the people of Idaho and they deserve to know if it is consistent with their values.

**DISCUSSION:**

Senate and House Committee members had questions concerning various aspects of the execution process. **Ms. Cover** responded that there is an independent idea that no one wants executions to be inhumane. One way to ensure that is to give the public and the press the information they seek. The cost of secrecy cannot be ignored.

**TESTIMONY:**

**Kathy Griesmyer**, Policy Director, ACLU of Idaho, testified in opposition to **Docket No. 06-0000-1900**. **Ms. Griesmyer** focused her concern on the lack of public transparency. She emphasized that without oversight and regulation, the death penalty loses legitimacy and increases risk to all involved.

**DISCUSSION:**

In response to questions from the Committees **Ms. Griesmyer** explained that the ACLU depends on the Idaho Department of Correction to maintain the highest levels of integrity in the execution process as well as obtaining chemical compounds in legal and transparent ways.

**TESTIMONY:** **Ken Burgess**, representing the Idaho Press Club, spoke in opposition to **Docket No. 06-0000-1900**. **Mr. Burgess** stated that there are few things more significant than public executions. The Idaho Press Club position is that as long as Idaho engages in public executions, it is critical that the information related to that execution should be as public and transparent as possible.

**Director Tewalt** concluded by stating that in many ways the IDOC and the organizations represented were aligned. The intent behind the changes in the statutes is to ensure that executions are carried out in an appropriate manner and the procedures and substances used are known in advance, that they meet security standards, and are lawfully obtained.

**Chairman Lakey** indicated that voting on the above dockets would be taken in individual committees.

**ADJOURNED:** There being no further business to come before the Committees, **Chairman Lakey** adjourned the meeting at 2:45 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary