

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

DATE: Friday, January 12, 2024

TIME: 1:30 P.M.

PLACE: WW02

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Hart, Hartgen, Wintrow, Ruchti

Chairman Skaug, Vice Chairman Scott, Representatives Ehardt, Young, Cannon, Erickson, Alfieri, Allgood, Dixon (24), Gallagher, Garner, Handy, Lambert, Sauter, Wroten, Gannon, Coberly (Nash), Mathias

ABSENT/ EXCUSED: Senators Anthon and Ricks

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 Joint Senate Judiciary and Rules Committee (Committee) and the House Judiciary, Rules & Administration Committee (Committee) to order at 1:30 p.m.

INTRODUCTION: **Chairman Lakey** introduced Director Dowell and announced her presentation entitled "The Idaho Criminal Justice System" (Attachment #1).

PRESENTATION: **Ashley Dowell, Chair, Idaho Criminal Justice Commission (ICJC)**, explained her presentation was a high level look at the workings of the ICJC. The ICJC was created in 2005 by Governor Kempthorne's Executive Order and had been reauthorized by subsequent Governors. The Commission was committed to collaboration to address important criminal justice issues and challenges by developing and proposing balanced solutions, which were cost-effective and based on "best" practices to achieve a safer Idaho.

DISCUSSION: **Director Dowell** stated the remainder of the time would be used for questions from the Committee members about the Criminal Justice System which would be answered by the members of the ICJC Committee who were present. The questions were varied, had no connection to each other and the time was used for questions the group had relating to the Criminal Justice Commission. The questions and responses included in these minutes are a sampling of what was asked and are not a complete transcript of the discussion.

Chairman Lakey questioned how the Pardons and Parole Commission and the Governor interact on pardons and commutations. **Director Dowell** explained there were three different options for clemency in the State of Idaho. The first was pardons, which resulted in forgiveness of the crime and any associated penalties. Pardons were usually given to people who had crimes on their record, but had satisfied their sentence, had moved on and done well in the community. The Commission had full and final authority for pardons, except for specific situations such as cases that carry a penalty of up to life such as drug crimes or persistent violators. A commutation was the second option. It consisted of anything to modify the sentence the judge declared. The Commission had the authority to do that except in those same instances as mentioned above. The third clemency

option was the restoration of firearm rights. There was a statute which indicated which crimes, if committed, required a loss of firearms in the State of Idaho.

Chairman Lakey asked for an explanation about the Rider program. **Josh Tewalt**, Director, Idaho Department of Corrections, stated that a judge may impose a sentence for a period of time of up to 12 months where those people are sent to the Department of Correction. They were assessed, receive a battery of programs, and then a pre-sentence investigation and have submitted an amendment back to the judge. The judge then decided whether to release that person on probation or remand them to a term period of incarceration with the Department of Corrections. The intent of the Rider program was to act as a diversionary program to give people a chance to avoid prison. The results of this program over time had shown that the way it had been implemented, with adjustments made for risk, provided that the outcomes were worse for people going through the program than either people sentenced directly to probation or a term of incarceration. There was interest between the Department of Corrections and the Judiciary about why the program did not seem to be working as intended.

Representative Handy questioned if there was any oversight from the State or any rules of conduct that the counties used in putting together their misdemeanor probation programs. **Sheriff Kieran Donahue** explained that the nature of the crime, if it fell within the statutory guidelines and penalty of the statute determined where the violator ended up. Sheriffs had no influence on where a person was placed. The number of people did affect the sheriff's office because there was often not enough probation officers or physical space to take care of the needs of these people at a critical time in their lives.

Representative Handy asked if there was a magistrate who was now a district judge who could comment on the misdemeanor probation program. **Judge Tom Sullivan** explained that the misdemeanor probation program was an excellent resource, but overused program. The jail used held many people including felons, and people awaiting trial on serious felonies. There were limits on the number of people that were housed so often times supervised probation was used. The ratio of probationers to the number of probation officers was high. **Judge Sullivan** stated that his first concern when a person comes before him was whether he was a threat to public safety. Did he endanger the public by putting him on probation? The judges have to trust the parole officers to tell them what is going on with their violators, where they were at in their programs and what progress or lack of progress they made.

Senator Wintrow asked what, based on experience and research, was the best practice for time of supervision that did not result in more negative outcomes than positive ones. **Director Tewalt** stated that when talking about risk principles and addressing risk, if one can have someone on supervision and keep him in the community connected to resources successfully for a period of 36 months, he achieved the optimum amount of time. Anything exceeding that time will increase the chance of creating more harm than good.

Chairman Skaug inquired about pretrial release. **Sara Omundson** explained pretrial and misdemeanor probation were very similar in Idaho. A statute explained those services to the extent they collect funding as a fee from those who were being supervised. Pretrial was a service that was to provide supervision to those not yet convicted of a crime. It was not probation. A pretrial program was one where the judge stated he would release the offender, usually on their own recognizance, but they had to meet certain conditions, and return for trial as directed. Counties varied on if they had a pretrial program and its size.

Senator Hart asked what trends Director Tewalt saw in Idaho's prison population. **Director Tewalt** responded that he saw the system growing and he saw a dip in the population largely as a result of Covid-inspired practices and a general slowdown of the system itself. He said he saw the system back on the end of what he called a market correction. He added that he had seen changes in the composition of the prison population. In 2014, 24 percent of Idaho's prison population was sentenced for drug crimes only. At the end of 2022, that number had grown to 37 percent of the population. The back stories of these criminals were complex. There was a greater need for minimum custody and community-level beds than was currently available. The population was not getting harder. They dealt with a higher need, but a lower risk population.

ADJOURNED: There being no further business at this time, **Chairman Skaug** adjourned the meeting at 2:35 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary