

Idaho Criminal Justice Commission
Regular Meeting
September 29, 2023

Location: In Person – 3100 S. Vista Ave. Ste. 200 Boise, ID

Time: 9 a.m.–12 p.m.

Idaho Criminal Justice Commission Members Present:

Ashley Dowell, Chair, Comm of Pardons & Parole
Daniel Chadwick, Vice Chair, Public Member
Tracy Basterrechea, Chiefs of Police Association
Kieran Donahue, Idaho Sheriffs Association
Dave Jeppesen, Health & Welfare
Kedrick Wills, Idaho State Police
Jonathon Brody, Judge, District Court

Erik Lehtinen, SAPD
Thomas Sullivan, Judge, Magistrate Court
Jeff Nye, Idaho Attorney General’s Office
Darren Simpson, Judge, District Court
Jared Larsen, Office of the Governor
Denton Darrington, Public Member

Monty Prow, IDJC
Josh Tewalt, Department of Correction
Kathleen Elliott, Public Defense Commission
Sara Omundson, Idaho Supreme Court
Grant Loeb, Prosecuting Attorneys Assoc.
Greg Wilson, Department of Education

Comprising a quorum of Idaho Criminal Justice Commission (Commission)

Idaho Criminal Justice Commission Members Absent:

Melissa Wintrow, Senate Judiciary & Rules
Chris Mathias, House Jud, Rules & Admin
Todd Lakey, Senate Judiciary & Rules Chairman
Bruce Skaug, House Jud & Rules Admin

Bernadette LaSarte, Public Member
Marianne King, Office of Drug Policy
Joshua Hurwit, U.S. Attorney, District of Idaho

Seth Grigg, Idaho Association of Counties

Others Present:

Justice Horton
Tanea Parameter, ISP

Agenda <i>Who's Responsible</i>		Meeting Outcomes/Decisions Reached	Due Date
9:00 am (5 min)	Call to Order– <ul style="list-style-type: none"> Welcome and Roll Call— <i>Chair Ashley Dowell</i> Review Commission's Vision and Mission Statement and Values—<i>Commission Members</i> 		
Commission Management			
9:05 am (10 min)	Action Item – Approve May & July 2023 Minutes <u>Subcommittee Reports</u> <ul style="list-style-type: none"> Human Trafficking Sex Offense MMIP 	<p><i>There was a motion to approve the minutes from May and July 2023 by Kieran Donahue, Dave Jeppesen seconded. Motion carried.</i></p> <p>Coordinating with agencies to review services and a report will be out soon. Next meeting will be in October. They will review the first draft of the report.</p> <p>Need to determine if the subcommittee is still needed. They accomplished a lot over the last couple of years.</p> <p>Focusing on a training plan. They will be meeting in person in October. It will have a family round table, and LE roundtable.</p>	
Promote Well-Informed Policy Decisions			
9:20 am (20 min)	Process & Mechanics of a death penalty case – <i>Justice Horton</i>	<p>Idaho is one of the last states that allow/authorize capital punishment.</p> <p>What crimes does Idaho law specify death as a potential penalty?</p> <p>-1st degree murder – 18-4004 Punishment for murder</p> <p>-1st degree kidnapping – 18-4501(1) ...unless the victim has been liberated unharmed prior to the imposition of the death penalty. There are real problems with this regardless of whether or not there has been harm.</p> <p>-Perjury – 18-5411 Under U.S Supreme court you could get to the death penalty but there are also problems with this law.</p> <p>Restrictions on imposition of capital punishment: <u>Coker v. Georgia:</u> The court found that if the defendant did not kill the rape victim the death penalty goes against the 8th amendment.</p> <p><u>Kennedy v. Louisiana:</u> Ruled out capital punishment for any case that were not murder cases. They wanted to restrict this punishment to the very worst of the offenses. This focuses on the personal copiability.</p>	

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	<p><u>Enmund v. Florida:</u> This cases stated that the death penalty is unconstitutional for a person who is a minor participant in a felony and does not kill, attempt to kill, or intend to kill; however, there was other case law that stated there could be capital punishment for a major participant.</p> <p><u>Ford v. Wainwright:</u> <u>Roper v. Simmons:</u> <u>Atkins v. Virginia:</u> The supreme courts did ban the death penalty for those that are mentally ill or for those that are under the age of 18. Science says that the mind continues to develop until the age 25 but the court has decided that the cut off is 18. The court created some problems when they left it to the states to determine what it means to be mentally disabled. In 2014 the language was changed and also stated that IQ evidence entered for those over 70 was unconstitutional.</p> <p><u>Furman v. Georgia:</u> This was a big case that led to changes. It stated that the death penalty was a violation of the 8th amendment. The 5 judges that voted in favor of violation, 2 were completely against the death penalty/3 felt that the what the type of death needed to be reviewed and was arbitrary. There was a disparity in the cases. The absence of standard led to the death penalty being viewed as “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual... I simply conclude that the Eight and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”</p> <p>This case didn't specify how to fix the arbitrariness. Idaho's solution was simple. If the problem is discretion, get rid of discretion. They changed the 18-4004 language to “Every person guilty of murder in the first degree shall suffer death...”</p>	

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	<p><u>Woodson v. North Carolina:</u> This had impact on Idaho as they also got rid of discretion in North Carolina but the court held that it was unconstitutional due to the absence of discretion. Idaho was left to look at the three schemes that were left.</p> <p><u>Gregg v. Georgia:</u> Idaho followed this case. Idaho didn't wait for the supreme court to strike down their language in statute, but they just followed Gregg. It allowed for bifurcated proceedings, with separate guilt and punishment phases. In the punishment phase, evidence is presented both aggravation and mitigation. In order for the defendant to be eligible for the death penalty, fact-finder had to find the existence of a statutory aggravating circumstance beyond a reasonable doubt.</p> <p><u>Ring v. Arizona:</u> In Idaho the judge was the one who determined the aggravating factors but in other states that responsibility was on the jury. In 2002 this case led us to where we are today where if aggravating factors are determined by a judge it violates a defendant's constitutional right to trial by jury. This case brought up a second issue around 1st degree kidnapping statutes. There may be a need to fix this in the statutes as we still have language that gives the judge the authority to determine.</p> <p>Constitution <u>Art. 1, sec. 6:</u> "All persons shall be bailable by sufficient sureties, except for capital cases..."</p> <p><u>Idaho criminal rule 46(b):</u> "A person arrested for an offense punishable by death may be admitted to bail by any magistrate or district court authorized by law to set bail..."</p>	

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	<p><u>Idaho criminal rule 44.3(b):</u> Cases start in the magistrate division. The defendant is entitled to a defending attorney. If the case appears or is deemed a capital case two qualified attorneys must be appointed to represent an indent defendant within 14 days of the initial appearance. What are the qualifications to be one of these attorneys? The qualifications are in the rule. https://isc.idaho.gov/icr44-3</p> <p><u>Idaho criminal rule 44.3(c):</u> Attorneys selected for capital cases must be selected from the Idaho State Public Defense Commission Roster. This will change after the new state public defender is selected as the public defense commission will no longer exist after a certain date.</p> <p><u>18-4004A:</u> Specifies how/when the death penalty may be imposed. The prosecutor must file a notice to seek the death penalty no later than 60 days after entry of a plea. The notice must list the statutory aggravating circumstances that the state will rely on in seeking the death penalty. If no notice, the court must inform the potential jurors at the outset of jury selection that the death penalty is not a sentencing option.</p> <p><u>19-2515A:</u> The Idaho legislature determined a definition for “mentally retarded”. They stated that the onset of disability must occur prior to age 18. This section also states that the defendant must submit this notice at least 90 days prior to trial.</p> <p><u>Dunlap v. State:</u> This case was about whether or not jurors are able to follow the instructions they are given. This stated that if a juror was against the death penalty, there were excused from serving and on the flip side that if someone would vote for the death penalty every time, they were also excused. The trial judges make that determination. This is a hard job. If the juror says they can follow the</p>	

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		<p>instructions but have strong feelings one way or the other, they can still be confirmed.</p> <p><u>19-2126:</u> Once the evidence has been provided and the case moves forward, the jury is sequestered.</p> <p><u>19-2515:</u> This defines those that are eligible for the death penalty.</p> <p><u>Statutory aggravators:</u> The jury must find at least one of the 11 aggravating circumstances beyond a reasonable doubt in order for the defendant to be eligible for the death penalty, unless mitigating circumstances are sufficiently compelling that death would be unjust.</p> <p><u>Victim impact:</u> Information concerning the victim and the impact that the death of the victim has had on the victim's family is relevant and admissible; however, characterizations and opinions about the crime, the defendant and the appropriate sentence shall not be permitted as part of any victim impact information.</p> <p><u>Jury's role:</u> The jury must find at least one of the 11 aggravators has been established and then weigh all "mitigating circumstances" against each aggravating circumstance to determine if the death penalty would be unjust.</p> <p><u>Idaho criminal rule 44.2:</u> Requires the appointment of council (death penalty qualified).</p> <p><u>Post-conviction relief and appeal:</u> Idaho Code section 19-2719 establishes special procedures for PCR and appellate proceedings in connection with a capital case. Unlike typical criminal</p>	

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		<p>case, appeal time doesn't begin to start running until death warrant is filed. Earliest date for death warrant is upon decision on post-conviction application.</p> <p>The appeal must be filed within 42 days and must advance any legal or factual challenge to the sentence or conviction that is known or reasonably should be known. Only successive claims that may be considered are issues that were not know or could not reasonably have been known.</p> <p><u>Proceedings:</u> Trial court is to give first priority to capital cases and decide the petition for post-conviction relief (PCR) within 90 days. The time limit may only be extended upon a showing of "extraordinary circumstances" which the trial court must make in writing. The Supreme Court is required to immediately review the sufficiency of the circumstances.</p> <p><u>Appeal:</u> The Clerk of the Supreme Court automatically enters a stay of execution during the pendency of the appeal. The appeal will address all issues relating to defendant's conviction, sentence and post-conviction challenge.</p> <p><u>19-2827:</u> Requires the Supreme Court to consider the punishment as well as any errors asserted on appeal. As to the sentence the Supreme Court is required to determine whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the finding of statutory aggravating circumstance(s).</p>	
9:40 am (30 min)	Capital Crimes Defense Fund – <i>Kelli Brassfield, IAC</i>	<p><u>CCDF Board:</u> District 1: Leslie Duncan, Kootenai County District 2: Doug Zenner, Nez Perce County, Chair District 3: Mark Rekow, Gem County District 4: Mark Bolduc, Gooding County District 5: Whitney Manwaring, Bingham County District 6: Scott Kamachi, Fremont County At-Large: Brent Mendenhall, Madison County, Vice Chair</p>	

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		<p><u>History:</u> The CCDF and SAPD were established in 1998 by H0840. Counties pay assessments each year and there is an election process for board. There have been 57 cases since establishment. The board has approved \$4,942,107.36 since February 2018. The fund balance policy is to maintain \$1M in liquid assets and \$4.5M invested. 21 Counties have utilized the fund.</p> <p><u>Process:</u> The county is required to submit a simple application, which is a one-page document with some important case information. The board also requests the following to accompany the application: Criminal Information, the notice to seek the death penalty, proof that county deductible has been met (\$10,000), the completed spreadsheet, and the orders from the court for payment/invoices. After the county submits the required documents, IAC will review to make sure there isn't anything missing and then the board will review for approval or denial.</p> <p><u>What's Next:</u> The CCDF will no longer exist after Oct. 2024 as it is repealed w/ H0735. Any cases still being processed by the CCDF will transition to the state. This process is still unknown as the new state public defender has just taken office and he is working on putting together his transition team. Any funds left will go back to the counties.</p>	
10:10 am (10 min)	Break		
10:20 am (30 min)	IDOC Processes and Procedures – <i>Josh Tewalt, IDOC</i>	<p><u>History in Idaho:</u> Who is sentenced to death in Idaho: 7 men and 1 woman sentenced. Housed in Idaho Maximum Security Institution. These individuals were sentenced between 1983 and 2017.</p>	

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	<p><u>History of executions:</u> 1077 the new death penalty statute was implemented and there were executions in 1994 (Wells), 2011 (Rhoades), 2012 (Leavitt). Wells waived appeals and requested the process.</p> <p><u>External factors:</u> Legal landscape drives a lot of process. There are a lot of due process issues that are raised here. Challenges to methods and means of execution. Deal with trying to be thoughtful and meaningful in the processes and procedures. There has been a lot of rumors about transparency in around executions. There has to be balance between ensuring enough information is available to the public but also protecting the process. There was a disclosure added to the policy and procedures to keep certain information in the public domain. There is some information that will not be disclosed. Processes, qualifications, methods of execution, plus more is all public.</p> <p><u>Upon arrival at IDOC:</u> There is not movie style death row. The defendant is placed into restrictive housing (IMSI & PWCC). There is a screening and review process. Then they are placed into administrative segregation or close-restricted custody.</p> <p><u>After the death warrant is served:</u> The defendant is moved to an isolation cell and will be under 24-hour observation by two officers. They receive daily exercise, showers, and have phone access.</p> <p>Other states treat their death row inmates differently. We try to be thoughtful about how they are treated.</p> <p><u>Timeline:</u> Leading up to the day of death. The process is felt though the whole system even though the process is only at the max facility. Other facilities have some modified restrictions, other LE agencies are contacted, and media is also involved. Victims and families are also contacted.</p>	

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	<p>Death warrant served: condemned person moved to isolation cell. 30-21 days: preparations begin. Weekly briefings. Specialty teams begin weekly training. Issue a news release. 21-7 days: Finalize preparations. Finalize selection of media witnesses. 7-2 days: Confirm that inventory and necessary equipment are onsite. Stand up the ICS center. 2 days: Specialty team rehearsals. Preparation of the execution chamber. 24-12 hours: Specialty teams activated. Property removed and inventoried. 12 hours: Access to prison complex is limited. Facilities go on secure status.</p> <p><u>Three specialty teams required:</u> Escort team – IDOC staff to help maintain order and also move/transport the individual in a proper manner. Medical team – this process could not be done without this team. They are the ones that set the IV and complete the lethal injection process. Administration team – people are widely known, and they are each given a responsible part of the execution. This team could be used as a witness if needed.</p> <p><u>Training and rehearsal requirements:</u> There are 10 training sessions per year for the escort and medical teams regardless of execution schedule. There is weekly training for all teams after a death warrant has been served. Lastly, there are 4 training sessions and 2 rehearsals for escort, medical, and incident command staff. This training keeps us maintaining effectiveness.</p> <p><u>What's next?</u> The firing squad was reinstated as a method of execution in 2023. IDOC is reviewing policies from other jurisdictions to develop an understanding of infrastructure requirements. Policy and procedures developed will serve as the foundation for the design of a facility. Remains constitutional as of now.</p>	

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		<p>Other states are reviewing other methods of execution.</p> <p>Has the administrative team been challenged? Not yet. They are keeping great records so hopefully they have the best information.</p> <p>What about opt-out for staff? IDOC's job is not to punish. The sentence does that with one exception and that is the sentence of death. If someone came to us not realizing they may have to handle this task, we try to be respectful of those that do not feel they can carry out that task. No one on staff is compelled to complete these. These duties are voluntary. We do allow for a move of facility if they do not wish to be at the max facility while this process is going on.</p> <p>How are the teams determined? Do they know the person beforehand? Some staff have been around since they have been there. Some staff have "grown up" with the inmate. There are definitely relationships that are built, and this is taken into consideration when the teams are put together.</p>	
10:50 am (30 min)	Commutations – <i>Ashley Dowell, Pardons and Parole</i>	<p>A commutation may be considered for a person convicted of any misdemeanor or felony crime to modify a sentence imposed by the sentencing jurisdiction.</p> <p>Constitution - Pardoning power is in Article IV, Section 7. This authority is vested with the board of pardons and not with the governor.</p> <p>20-1016(2) The commission shall have the authority to grant commutations and pardons. If the governor approves the recommendation, the commission will issue the commutation or pardon. If the governor rejects the recommendation, no pardon or commutation shall issue, and the recommendation shall be of no force or effect. Pizzoto cases brought up challenges that needed legislative fix.</p> <p>Process (IDAPA 450): A petition must be submitted to initiate the process. The petition must contain the reason for the request and the precise modification being requested. The review or deliberation on the petition will be conducted in executive session.</p>	

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		<p>The scheduling of a hearing is at the complete discretion of the commission. Person must be present at a commutation hearing.</p> <p><u>Death sentence (IDAPA 450.03):</u> Page limit may be changes in cases of offenders under sentence of death. At any time, the commission may review a file, information, or interview an offender without activation the commutation process. The commission may elect to receive and consider a petition for a death penalty modification at any time.</p> <p><u>Proceedings:</u> The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.</p>	
11:20 am	Other ICJC Business – MOU (<i>Action</i>)	<p>MOU at the next meeting.</p> <p>There is an idea to have December's meeting in the capital and have a remote option. This could allow for legislator education.</p>	
12:00 am	Adjournment		

Next regularly scheduled meeting to be held in Boise, Friday, October 20, 2023

“Collaborating for a Safer Idaho”