

State of the Judiciary
Chief Justice Roger S. Burdick, Idaho Supreme Court
Message to the Legislature
January 15, 2020

*Madam President, Mr. President Pro Tern, and distinguished members of the Idaho Senate, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.

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First, I must truly say thank you for your time. This year it is especially precious. So I'll be brief.

In years past I have reported to you on the issues which have pressured Idaho's judicial system. Today, I am here to report the State of Idaho's judiciary has never been better in my 16 years on the Idaho Supreme Court. The successes I am going to report to you are in a very large part the result of your respect for our founders' grand plan of three distinct but equal branches of government - a plan that is enshrined in both our national and state Constitutions. Though the judicial branch no longer resides in this remarkable building as we once did, we are always acutely aware of our role as one of three co-equals joined by the executive and the legislative.

You have already heard from the executive branch, as we all joined together to listen to Governor Brad Little's State of the State remarks.

You, the legislative branch will digest those remarks as well as mine. Then listen to citizens' needs and inputs and fashion a way forward.

We as a judiciary will continue to work with the executive branch to carry out policy where we can; as well as our primary job of interpreting your law when a conflict or question arises.

All of us together have continued to respect our places. In doing so we have built a state that is attracting more people than any other.

Your support, philosophically, as well as financially has enabled Idaho's judiciary to have a banner year.

I will start with a report of last year and end with exciting news.

First, we seem to have overcome the inevitable demographic challenge all of America's governments and business have had to face. In my time at the Supreme Court we have had almost a complete turnover of our judges and justices. For the district courts across the State, we have attracted a remarkable group of new magistrate and district judges to take up the mantle.

As for the appellate courts, there has been a complete replacement of the Court of Appeals judges and Supreme Court justices - yours truly and Chief Judge David Gratton being the only exceptions.

To ensure these judges are best prepared to meet the rigorous tasks asked of them, we provided enhanced training, including our educational component of a two-year New Judges Orientation, district and magistrate conferences, as well as the annual judicial conference.

Again your support of the new Judicial Performance system has resulted in 152 evaluations of new or experienced judges. We have also trained eight facilitator judges who help those evaluated or new judges to learn best techniques or identify needed training.

As an aside, we continue to struggle with attracting large numbers of well-qualified individuals for district judge positions. I say this not as an affront to any of our past applicants or appointees but only a statement of fact. Since 2000 we have averaged almost 15 candidates per position for magistrate judge openings but only an average of about 7 district court candidates.

For a change, I'd like to address some happy budget news from the judiciary.

The judiciary has always done its best to meet the Governor's or Legislature's requests for belt tightening. There could be no better example of this concept than in 2010. As a result of the great recession, Idaho's governmental agencies had to cut budgets by 10%. The judiciary faced a unique challenge because such a high portion of our budget is personnel (judges) and the courts must stay open. Rising to that challenge, our judges, *every single one of them*, volunteered to work two days without pay to meet the holdback requirement. Thanks to them, the business of the rule of law continued uninterrupted.

As you know, this year Governor Little asked all state entities in Idaho to reexamine their budgets as part of a spending reset. Out of respect for and in the spirit of cooperation with the other branches of government, the judiciary met Governor Little's request last year with a 1% early reversion of our budget for 2020. This reduction amounted to a little over half a million dollars in budget savings. We are continuing to review our budget to look for any reductions that can be made in our FY2021 budget requests.

One way the judiciary has been reexamining its budget over the last year is by engaging in an individual-by-individual review of our treatment court participants to determine how many are likely to be Medicaid eligible. Our treatment courts are those specialty courts such as drug court, mental health court, veterans' treatment court and others. Based on our analysis, at any point in time about 58% of participants will be eligible for Medicaid. This is an increase from the previous 15.5% who were eligible prior to Medicaid expansion. For the approximately 58% of participants who will be Medicaid eligible, we feel about 50% of their individual services will be covered by Medicaid.

Given these numbers, the judiciary has carefully considered the amount of ongoing general fund treatment dollars estimated for FY2021. Keeping in mind that we must maintain the effectiveness of drug courts by continuing the current levels of care, we are not planning on requesting that any of the \$913,000 FY2020 one-time appropriation be continued. In addition, we have requested a further reduction of \$600,000 in our on-going treatment funding for FY2021 to account for treatment expected to be covered by Medicaid expansion.

One caveat: these are our best good faith estimates and we think these figures will allow us to keep our level of excellence in these treatment courts. If something changes, we will have to turn to you with that information.

The main pressure on Idaho's judiciary today is new population growth. The growth has primarily taken place in our existing population centers. However, growing populations have caused increased strain on our courts around the state. As such, we are asking for three new

judges for North Idaho; a district judge in Bonner County and two new magistrate judges in Kootenai County. It has been reported to me that those county commissioners have supported the need for these requests and are preparing letters of support to formalize their position.

It is important to emphasize the policy of the Idaho Supreme Court is to only request new judges when the need is critical. Your historic support of our requests shows your trust in those requests. We will never break that trust.

We also had a request for one district judge and two magistrate judges in Ada County.

However, in the spirit of only requesting new judgeships when absolutely necessary, we decided to wait and see what the impact of last year's new district judge and two magistrate judges authorized by you for Ada County was before requesting them. We also acknowledge Canyon County's explosion in population and case load and are watching these numbers carefully, though we are not requesting a new judgeship in Canyon County at this time.

As you know, there is one concrete rule in business - every enterprise depends on its personnel. Our judges and co-workers make or break the enterprise. We again thank you for your support for our enterprise - the rule of law.

On a more discreet level, I would like to mention other successes this year by Idaho's Judiciary.

There is a renewed effort among the courts, the Department of Health & Welfare and the Department of Idaho Juvenile Corrections to review our juvenile justice system to instill best practices, find areas of cooperation and improvement. One initial success was a seminar of these entities to review the processes that must be followed prior to a juvenile being committed to Idaho Department of Juvenile Corrections. The hope is to make sure every local effort has been expended before this final decision.

Additionally, a grant from Georgetown University Center focuses on improving outcomes for youth involved in both child protection and juvenile justice systems. These bold initiatives are being led by Judge Mark Ingram of our Juvenile Justice Advisory Committee. The Court will be very interested in efforts to help juvenile offenders with mental health and other programs. We stand ready, not to dictate policy, but to talk about impacts on our courts or problem areas.

Idaho's treatment courts served 2,640 clients in FY2019 with 685 graduates. Over 27,000 persons have been served throughout Idaho's history in this new area. Studies continue to show reduced recidivism for participants in all of our treatment courts - drug, mental health, veterans and others. These participants are not in Idaho's prisons during treatment - rather, they hold employment, and are in the economic stream as a result. To show the continued growth of this movement, in January, 2019, the Idaho Supreme Court revised the Idaho Adult Drug Court Standards to implement and follow best practices based upon the most up to date research. None of these successes could happen without your generous support.

A pet project of mine was the modernization and rejuvenation of the framework for guardians and conservators started in 2013. Our progress has been highlighted in my previous reports to you and now we have finalized several resources to support our mostly self represented guardians and conservators. We have produced a new handbook for conservators which show

how to fulfill their rights and responsibilities. These are given out by either a judge, at our Court Assistance Offices, or can be accessed online.

My final comment touches on the nation's most intractable social issue. Our nation, our state, and therefore our families struggle with how we can address mental illness and its many personal and social impacts. We believe there is a need to chart a new course forward if we are going to improve how we deal with the mentally ill in Idaho.

The fact that we can do better was brought home to us as a result of the Western Regional Conference of Chief Justices meeting in Sun Valley in May of 2019. Justice John Stegner hosted this conference of 12 states and Guam on our behalf. These representatives told the same story of a fragmented system that was not meeting the needs of the mentally ill, and as a result, millions of dollars were not accomplishing their goals. This conference energized the executive branch and legislative branch representatives to act.

Idaho also spends significant amounts of money in directly dealing with mental illness.

These dollars are the tip of the iceberg in the real cost of mental illness in terms of increased public safety efforts or the human toll on families and friends, or in some cases even strangers.

However, it is not all doom and gloom. I would also like to highlight actions taken historically and just recently to move forward in a more coordinated fashion.

First, it is important to recognize Idaho's success in the recent past. We applaud the significant progress in training our police or other first responders with Crisis Intervention training. This training helps officers identify and deal with individuals who are suffering with mental illness.

This training has already helped officers defuse situations or seek avenues other than straight-to-jail or hospital emergency rooms. Neither of these alternatives is appropriate for those in a psychotic break or other mental illness episode. Often times this placement would result in a person reacting in a non-compliant or aggressive manner necessitating further criminal charges. Statistically speaking, mentally ill persons who are arrested spend substantially more time incarcerated than those who are not suffering a mental illness episode.

This training is complimented by the addition of our mental health crisis centers. These are stand-alone safe havens of specialized training and treatment for those suffering a mental illness occurrence. We now have crisis centers located in each judicial district. They are open not only to handle emergency referrals by first responders, but up to 70% of the people accessing them are self-referrals. Whether persons go to these centers voluntarily or the result of first responders' actions, we are breaking the mental illness-to-jail pipeline.

Another bright success is our mental health courts. These courts have Assertive Community Treatment teams to deal with mentally ill citizens rather than jailers. These clients have regular contact with these teams where medications are monitored and other services coordinated. Like all treatment courts, these judges serve without additional benefits or reduction in caseloads.

Irrespective of the successes, the problem needs more.

The Supreme Court, spearheaded by Justice John Stegner and Administrative Director Sara Thomas, have been meeting with the Governor and legislative leaders to try to create a unified course going forward.

The first step is identifying what we are doing and spending in this area. We will question whether our actions are effective.

We will recognize better actions and methods of going forward, seamlessly, rather than in fragmented, myopic ways.

We are not asking for money, we are asking that the money be spent in the most efficient and effective way.

We hope to start by the Supreme Court's Judicial Proclamation being joined with a House and Senate Joint Resolution and the Governor's Executive Order recognizing this societal issue and a coordinated, aggressive path forward to improvement. We have received grant commitments to provide technical assistance to identify Idaho solutions going forward.

As this work goes forward we will keep you informed. We would like to thank Health & Welfare Director Jeppesen for his help and fresh attitude in working with the courts on this most important project.

Finally, I thank you for your support of Idaho's judiciary. I'd like to remind you that from my work on the Board of Directors of the Conference of Chief Justices and my attendance of conferences throughout the nation, legislators, justices/judges, and governors are envious of the pristine relationships and respect our branches have with each other. We must work together to find our path for the "Idaho way" - Thank you.