

# MEETING MINUTES

## STATE PUBLIC DEFENSE COMMISSION

*Date | time* 1/19/2016 1:00 PM | *Location* Len B. Jordan Building, Conference Room B-09,  
650 W. State Street, Boise, ID 83702

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*Meeting* Discussion on Proposed Legislation

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### Commission members present

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Darrell Bolz, Vice Chair, Juvenile Justice Comm. | Sara Thomas, SAPD | Chuck Winder, Senator | Christy Perry, Representative | Linda Copple Trout, Administrative Director of the Courts

Nichole Devaney, Admin. Asst.

### Commission members absent

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William Wellman, Defense Attorney | Kimber Ricks, Madison Co. Comm.

### Others present

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Jared Hoskins, Legislative Services, Ryan & Eric, ACLU

	Item	Responsible
1.	Welcome and Call to Order: The meeting was called to order at 1:09pm.	Bolz
2.	Approval of prior Meeting Minutes (01/05/16): Winder motioned to approve the 01/05/16 minutes, Thomas seconded, and the motion passed unanimously.	
3.	Election of Commission Officers: The commission bylaws do not allow for secession of officers, therefore a vote is needed to elect new officers. Thomas nominated Bolz for chair, Perry seconded, and the vote was unanimous. Trout nominated Thomas as vice chair, Perry seconded, the vote was also unanimous.	Bolz
4.	Review Interim Committee's Proposed Legislation: Perry suggested that she walk the members through the draft and address issues as they were raised within the sections. She explained that the draft is structured to enable the counties and state to work together on funding. The counties have voted in favor of a statewide system but that is unlikely to happen. Trout asked about the possibility of a district wide system. Perry explained that the committee had given it some consideration but it became very difficult to develop without being state run and the Committee will not indorse a statewide system. The Committee was not opposed to a system that included a regional supervisory element, but they chose not to go that route at this time. The Committee's intent was to enable the Commission to go that route at a later date if needed. Trout commented that it would be nice to find a middle ground considering that the majority of the counties would like to see a state run system. Perry agreed but it has been very difficult to get there with this initial	Bolz

legislation. Bolz commented that in the rural counties a regional system would help those with inexperience, Thomas shared that that was especial true in Child Protection cases.

Section 1: Bolz questioned if the Commission can mandate that counties enter into contracts as he understood the legislation to read. Perry explained that was not the case. The Commission would provide resources in terms of promulgating the rules, reporting and the development of standards largely being the Commission's responsibility. Thomas shared the NALDA standards adopted within the model contract terms should be the first step when setting standards to be pushed through the negotiated rules process. Perry continued explaining that the Commission will be able to decide what information is needed to construct the grant application. Thomas commented that the dates indicate the Commission will begin handing out money in FY2016. Perry explained that the dates will need to be amended in that regard as rules and standards would not be in place by that time. Perry resumed stating that promulgating rules for standards, enforcement, oversight and implementation is the section where a regional model could be proposed. Thomas asked if there was non-compliance would the AG's office be able to provide counsel to the Commission. Indicating that could pose a conflict. The members agreed that the issue would need to be addressed if the legislation was passed. Perry continued, the Standards section is where the principles had been utilized, as recommended by the AG's office. It was their opinion that with the verbiage used the Commission would not be in danger of litigation any more than another agency. The Dates section is a work in progress as mentioned. Bolz asked how the Commission would mandate 19-850a Subsection 7. Perry explained that this would be addressed as part of the standards and would include any rule the Commission promulgates. It is meant to work as a partnership with the PD's to rectify their deficiencies.

Section 1(b) requires the Commission to make recommendation to the legislature by Jan. 20<sup>th</sup> such as enforcement, funding and changes that are needed based on experience. There is a sunset clause on the funding portion of the legislation. Thomas asked if the clause could be changed to read something like "bring forward recommendation on further funding". Jared Hoskins shared that other areas within the legislation speak to this. Thomas's concern was that after the initial grants are distributed it is not clear that funding will continue.

Perry continued, Page 3-Section 1(c): Powers and Duties – This language was changed to review instead of investigate. The Commission is allowed to hire an executive director, employ persons in addition to the executive director as it deems necessary to conduct the commission's business to include an office. Section 1(e): The language regarding funding assistance for extraordinary litigation affords counties the ability to come to the Commission to request funding for experts and special circumstances over and above the county's local share. Thomas and Bolz questioned how the Commission would budget for that. Hoskins explained that basically the Commission will have to choose an amount to start and then go back to the Interim Committee for additional funding as it was needed. Thomas shared that rural counties will more likely need funds for extraordinary cost, asking how the Commission would define extraordinary cost and have it apply to all counties. Perry explained that this was truly meant to be an over and above normal budgeted services (labs, witnesses, investigation). Thomas suggested that a formula be added to allow for the funds, she will make some recommendations to Perry.

Section 1(f): If in the event a county just refused to provide PD services. The Commission could then take over and would be allowed to bill the county for indigent defense services it provides. If unpaid a civil suit can be filed to recoup the cost. Thomas suggested adding language that cost be stated as “cost reasonably incurred by the Commission to meet the standards set forth in statute”. Hoskins shared that may be addressed on page 7, 19-862A Subsection 10. Trout asked at what point is it intended that the Commission would take over service. Perry and Thomas responded that the individual and county would have to be willfully not adhering to the standards. Trout inquired as to how the Commission would become aware of this. Perry explained that once put in place the regional supervisory role would be aware, additionally the Commission would likely receive complaints. Trout asked if complaints are received at the Commission how are they investigated and or dealt with. Thomas explained that originally the Commission made the recommendation to have the seven district liaisons to provide investigative services. Adding that the current legislation does not address that ability. Perry commented that she has taken the position that the Commission will need more people with the Committee. Thomas pointed out that the Commission will need additional staff as soon as FY2017 and that will need to be addressed at the JFAC presentation scheduled in a few weeks. Thomas estimated that three additional people are needed now to begin the promulgating of rules and development of standards. Subsection 3: The language was changed to read non- compliance with standards is not grounds for post-conviction relief, however Thomas shared that is in contrast of the federal regulation. Subsection 12 on page 7 also has this issue. If it refers to the principles it’s fine but not if the language reads standards.

Page 4, Section 2: Definitions – In subsection 1, Local Share means counties will still have to maintain their local share then apply for funding over and above their local share. It was changed to read three out of the most recently completed five county fiscal years because of the way the county fiscal year budgets work. Using the term Median in this section removes some of the outliers. Thomas suggested the language also include “amount not covered under the capital crimes defense fund”. Hoskins pointed out that line 27 on this page addresses that issue. He noted that it does use a double negative and recommended changing the verbiage to remove the negative. The definition of Indigent Defense Provider had also been changed. The term Grant was defined as: Shall not exceed 15% or \$25,000 of the counties local share. Thomas asked if it was clear that counties were not required to expend their full local share if it is not necessary to meet the standards and Perry felt that was clear in the existing language.

Page 5, Section 3: There were no new changes to this section.

Page 6, Section 5: A grant application must be submitted by June 1<sup>st</sup> of each year, to include a plan to cure deficiencies along with the projected cost of the plan. Subsection 4: should specify all annual reports of defending attorneys required by 19-864. Bolz asked if the counties are okay with subsection 6 (page 7); Perry explained there has not been much comment from the counties since their vote on a state system. Subsection 6, basically says that counties cannot claim lack of funding as a reason not to provide defense services. Thomas shared that the Commission really needs to look at the dates with regard to setting standards. She suggested that the Commission go through the negotiated rule making process and give the counties the grant money requested this first year, Bolz agreed that would probably be the best considering the late date in which the legislation may be passed. Hoskins shared that the language specifies any rule promulgated even if that is

zero rules which would be acceptable in that regard. Thomas made a motion that the Commission report to the Interim Committee that it prefers to go through the rule making process to develop the standards. Bolz seconded and the vote was unanimous. Subsection 7: the second reference to April date needs to be removed. Subsection 9: deals with willful non compliance. Bolz suggested that this would put the Commission in a precarious position. Thomas agreed but explained that it is in the best for the state overall. The commission members feel that there will be counties that make the choice to walk away, putting the Commission in the difficult position of taking over. Perry pointed out that willful non- compliance will require civil action. This is where education at the county level will be necessary. Subsection 10: Thomas asked who would decide the amount of payment for services provided. Perry responded that the Commission would be responsible for billing however the county can appeal the cost through the administrative act process. Thomas then asked if the Commission has the ability to file a civil action to recoup costs while an appeal is also occurring. She requested that the legislation specify at which point a civil action can be pursued in the processes. Trout commented that disputes could continue in either resolution process for years requiring the Commission to incur cost during that period creating budgeting issues. Section 1 subsection 3(f) on page 3 also reference civil action, Trout suggested all the remedies be within the same section. Perry stated that this would need to be taken back to the Committee for discussion at which time she would like to provide all the Commission's recommendations. Thomas moved that subsection 11 on page 7 line 39 - 42 be stricken and substituted with the same language as page 6 lines 30 – 32 for the purpose of confirming. Winder seconded and the motion unanimously carried.

Page 8 - Section 6: Records - Perry started off by asking if all counties will be on the Odyssey System. Trout confirmed that all courts throughout the state will be on Odyssey. Thomas commented that not all PD's will be on Odyssey, stating that there is a separate module from the counties system that could be used by PD's but it would have to be purchased. The Attorney module is designed for PD's use to track cases but that there are also other systems available. Perry responded that grant funds could be used to get PD's on the system considering much of the required reporting will be available through the Odyssey program.

Thomas motioned that in the Commission's budget request to JFAC it needs to include the seven additional regional people to assist in the grant process and oversight as well as offices to house those individuals. Winder seconded and the motion passed unanimously. Hoskins shared the he had run some initial numbers and that adding seven additional persons would increase the budget by roughly 6.6 million. Trout asked what type of person would fill the role of district supervisor. It was agreed someone with a law degree would be necessary, she then asked if it could be a part time position. Thomas explained that the responsibilities of the person would require a full time person due to the investigation portion and assistance with training. Bolz asked if there would be reluctance from the Committee to the addition of seven more people on the Commission staff. Perry replied that when described as resource people the Committee Members seem to be more receptive.

Perry stated that there was chatter at the last meeting that the Commission may not be in support of the legislation, asking if that was true. Winder then moved the Commission recommend the draft as amended. Thomas said she was not ready to make a recommendation yet she would like to see the amended final draft before committing.

Item	Responsible
<p>Adding that she would be in support only if the additional seven district persons are in place, having them in place is critical. Trout did not want to commit at this point either. She has reservation about funding for all the staff and implementation as the legislature has not been in favor of spending a lot of money on this issue. Bolz would like to see the final draft before committing as well. He asked if Perry thought a final draft would come out of the committee meeting scheduled for Thursday. Thomas offered that the Commission should meet prior to the Committees final meeting of the session after which a final draft of the legislation would be available for discussion.</p>	
5. Proxy Voting: Not addressed at this time.	Bolz
7. Future Meeting Schedule: To be determined based on the finalization of the draft legislation.	
8. Agenda Items for Next Meeting: Finalized Draft Legislation	
9. Next Meeting Location: To be determined however Boise would be the most convenient for most at this time.	
10. Adjournment: The meeting adjourned at 3:59.	Bolz

Attachments:

Proposed Legislation (Draft RCB042)