

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 8/30/2016 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: September Commission Meeting

Commission members present

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, SAPD | Christy Perry, Vice Chair, Representative | Chuck Winder, Senator (arrived at 3:24) | William Wellman, Defense Attorney | Linda Copple Trout, Representative of the Courts

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Nichole Devaney, Admin. Asst.

Commission members absent

Kimber Ricks, Madison Co. Comm.

Others present

Marilyn Paul, Twin Falls County Public Defender | Ruth Brown, Idaho Press-Tribune | Tera Harden, Canyon County Public Defender | Jared Hoskins, Legislative Services Office | Kathy Griesmyer, ACLU

| Item | Responsible |
|--|-------------|
| 1. Welcome and Call to Order: Bolz called the meeting to order at 1:05pm. | Bolz |
| 2. Approval of prior Meeting Minutes (8/02/16): Wellman moved to approve the minutes from 8/2/16, Trout seconded and the members unanimously agreed. | Bolz |
| 3. Executive Director Report | Simmons |
| a. FY2016 Performance Report: ED Simmons explained that the following edits had been made: Goals have been beefed up based on the new statute. CLEs were increased to run in line with the standards. Benchmarks were left to help compensate for the new statute. Goals were left from previous year. The members had no comment on report. Trout moved to approve the performance report, Fredericksen seconded and the members unanimously approved the report. | |
| b. FY2018 Budget Approval: ED Simmons explained that the priority is salary increases for FY2018. In comparison to other states the executive director salary is significantly underfunded. In addition, a comparison to other Idaho state agency director salaries, such as Pardons and Parole, the same was true. The increase request was also based in part upon the additional duties that the statute creates for the director position. It is ED Simmons' feeling that postponing the request for increases to FY2019 without making the request now may result in a loss of traction. The Deputy Director and Admin. Asst. positions have also been increased based on the percentage of the ED position increase. Trout asked Bolz and Perry how the legislature might feel about the request. Bolz responded that he was unsure, if it were the recommendation of the | |

governor it has a better chance. Perry stated that if the request stays within JFAC and is not sent to the legislature it has a better chance, but if it goes beyond JFAC it would likely be turned down. She said the commission could be treading on thin ice but understands the argument. ED Simmons stated that part of her argument is that at the current rate stability of the position could be compromised. Perry expressed that would not be something the legislature hadn't heard, and a concern that they are fully aware of. Wellman shared that he agreed the position is worth the increase however wondered if this may be the straw that breaks the camel's back. Bolz offered that when presenting to JFAC you are only allowed to present what is recommended by the governor and ED Simmons would not be able to speak about the increase request unless asked. Perry added that she doesn't disagree with the increase in the position. She would be supportive and will assist with the presentation. ED Simmons continued, explaining that there are two items in the budget that we will not be requesting additional funds for as anticipated previously. Adam Jarvis suggested that the commission request an object transfer from Trust Benefits to cover the expenses. They include the research data collection project and retaining an immigration lawyer to provide consultation to PDs. Wellman asked with the end of the interim committee, would the commission now go to Judiciary & Rules. Adding that there was considerable discussion on the local share percentage amounts, he wondered how that will affect the grant budget in the future. Perry responded that the legislature will take their cues moving forward from the PDC. Wellman commented that the commission takes its cues from the governor's office. Wellman then moved to approve the budget request for FY2018 with Chair Bolz's review of the letter, Perry seconded, and the members unanimously agreed to approve the budget proposal.

- c. **District Liaisons:** ED Simmons is considering bringing a liaison on board sooner than anticipated. DHR is working on the position classification. She shared that with the amount of work we are doing, splitting up the hires may be beneficial. Wellman asked what she was envisioning for those position. She responded that she was looking at one for the Treasure Valley area, one in CDA and one in Idaho Falls. Trout asked if a job description had been created, ED Simmons said they were working on it.
- d. **Extraordinary Litigation Definition:** Discussion on this topic was asked to be pushed once again. The information collected from the counties would not be helpful to the discussion.

4. County Contracts

Simmons

- a. **Written:** ED Simmons shared that while visiting with Washington County, the prosecutor stated the statute does not require a written contract. Perry commented that could be fixed. ED Simmons continued, explaining that the county is working on the contracts. Trout asked if these will be for the main entity who is providing PD services. ED Simmons responded that they will be for the attorneys handling the public defense cases as they are appointed and really are not conflicted out.
- b. **Availability of Attorneys to Fulfill Requirements:** ED Simmons shared that some of the counties just don't have attorneys to fill their contract PD positions. Counties are concerned that if the standards and/or requirements are too stringent they will not be able to find attorneys. Bolz asked how many of the counties would like the PDC to just come in and take over. ED Simmons responded that there were a few comments to that effect. Perry commented that prior to the commission the smaller counties did not have

a voice but with the commission in place now they will find they have one. Trout commented that the counties will begin to see as the grants are issued that there are no strings attached to the funding.

- c. **Compensation Rates:** Bolz asked if this is in concern to the situation in Nez Perce County. ED Simmons explained to the other members that two of the contract PD's will not be renewing their contracts due to a compensation increase that was denied. Wellman asked what the previous contract provided. ED Simmons provided the amount. Bolz questioned if the county was not intending to provide an increase what is the plan for the grant funds. The members agreed they cannot get involved with contract negotiations to include compensation. Wellman stated that the commission can provide information in this respect and be a resource but that should be the extent of their involvement.

- d. **Dissatisfaction with PD's:**

- e. **Enforcement RE: Defending Attorneys:** ED Simmons asked what the commission's recourse is if a contracting attorney does not comply with the standards, expressing this is something the commission will need to consider as the standards are put in place.

Perry asked how many flat fee contracts are still in effect. ED Simmons was unsure but will provide that information at a later date.

- 5. **Training of Stakeholders – One Day Seminar:** ED Simmons would like to conduct a one-day seminar on "this is what a PD does" to help provide knowledge to those stakeholders that are not familiar with public defense practices. She has already discussed the idea with Dan Chadwick at IAC and they are looking at next June to conduct the training. Simmons

Wellman inquired as to what PDC trainings were planned for FY2017. ED Simmons shared that she would like to conduct a summit again similar to the one held in FY2015. That may include a one-day trial school. In addition to partnering with IACDL for the Sun Valley Conference and the Federal Defenders conference possibly.

- 6. **Grant Applications** Simmons

- a. **Summary:** ED Simmons shared that 43 of 44 counties applied, all are eligible for the grant funding. 20 of the 43 are eligible for the maximum \$25,000 award. One county is considering going in house. One county, Gooding already went in-house this year. Fifteen counties appear to have excessive caseloads if the commission chooses to use the national standards. Only 8 of the counties that applied did not experience a budget increase between FY2011 and FY2015. Trout asked if other commission members had thoughts about limitations on construction projects with respect to grant funds. Perry shared that this go around it was more or less a freebie from the interim committee's stand point. Commission members agreed that using the funding toward construction of new office to house additional personnel or provide space for client meetings was acceptable but anything that required substantial structural changes should be the responsibility of the county.

Ada: ED Simmons summarized Ada County's application and county data; Mr. Geddes offered that Ada's use of the funding for construction would be to reorganize their office to accommodate the additional staff. Fredericksen moved to approve the

maximum grant award of \$1,067,219.55 for Ada. Perry seconded, and the members unanimously approved the award.

Trout asked if the commission should be approving funds to hire attorneys, given that these are grant funds and not permanent funding. ED Simmons responded that the counties are aware of that issue and understand that funding will need to be continued.

Adams: Adams County is only 25% of the PD's workload. He also handles private cases and is a PD in Washington county. The county showed a budget decrease from 2015. Perry asked about counties that are including continuing education as part of the plan. She wondered if that was because they don't know they can rely on the PDC for that. ED Simmons explained the PDC would be providing training. Wellman moved to approve the maximum grant award of \$25,000 for Adams County. Fredericksen seconded, and the members unanimously approved the award.

Canyon: Perry asked if they will be spending a large some of the grant on personnel. ED Simmons replied yes that was their intension. Canyon brought the PDs in house in 2015. Perry asked of Ms. Harden if they are seeing an increase in caseload due to increased prosecutions or other things. Ms. Harden replied that the increase is largely based on the poverty-level growth in the county and that additionally there has been a change in the way the judges are handling cases resulting in additional appointments. Bolz asked if their plan is to hire additional attorneys, how will the county continue to provide that service. Ms. Harden shared that the board of commissioners will be changing and she envisions that they will continue to fund the positions. Ms. Harden continued, explaining why their request only contained personnel, stating that when the office was initially set up it was designed for the additional staff. ED Simmons shared that Canyon requested more than the statutorily allowed 15%, which the commission would be unable to grant. Wellman moved to approve the maximum grant award of \$367,288.27 for Canyon County. Perry seconded, and the members unanimously approved the award.

Twin Falls: ED Simmons shared that the Twin Falls County Commissioners had concerns about the amount the county was spending on conflicts and wondered if the attorney manager component of Odyssey would allow them to better fulfill the reporting requirements. ED Simmons stated that caseloads are a little high in the county and that their numbers did not include moneys paid for a CASA attorney. However, there is an attorney who provides that service. They have twelve attorneys in their office and two attorneys providing conflict counsel. Wellman asked what the compensation rate is for the conflict attorneys. Ms. Paul, in attendance, did not have that information. Wellman stated that this is one area the commission may want to provide compensation recommendations for, offering that if counties want good attorneys it is a direct reflection of compensation. Ms. Paul explained that they have similar issues as Canyon with regard to conflict counsel in that there are multiple defendants on a single case. Fredericksen moved to approve the maximum grant award of \$202,598.70 for Twin Falls County. Wellman seconded, and the members unanimously approved the award.

Bannock: In looking at the county data, Wellman expressed the there is no doubt they are in need of assistance. Their caseloads are enormous. ED Simmons responded that

the numbers were pulled from ISTARs which may be mixing and duplicating cases. Fredericksen asked if the commission could make a recommendation to add an attorney position. Trout shared that it seems to her that is a recommendation the commission could make after review of information around the state. ED Simmons shared that she would like to ask them to do a little more detailed accounting of cases to help provide a truer picture of caseloads and that this is one office that plans to add an investigator to their staff as they do not currently have one. Fredericksen moved to approve the maximum grant award of \$181,602.60 for Bannock County. Wellman seconded, and the members unanimously approved the award. ED Simmons asked if the recommendation should include a staffing recommendation and the members agreed it should.

Bear Lake: Perry moved to approve the maximum grant award of \$25,000 for Bear Lake County. Wellman seconded, and the members unanimously approved the award.

Bingham: ED Simmons mentioned that the caseload numbers on the application maybe on the low side after having spoken to one of the PD's. This is one county that will have issues with the initial appearance requirements. They do not have a case management system and could utilize grant funds for that. Fredericksen moved to approve the maximum grant award of \$42,242.40 for Bingham County. Wellman seconded, and the members unanimously approved the award.

Blaine: They are requesting a court interpreter to allow PD's to confer with their clients. Wellman moved to approve the maximum grant award of \$51,555.57 for Blaine County. Trout seconded, and the members unanimously approved the award.

Boise: The county is considering bringing their PD services in-house. Perry moved to approve the maximum grant award of \$25,000 for Boise County. Fredericksen seconded, and the members unanimously approved the award.

Bonner: Bonner is considering increasing their personnel. They do have a case management system. Fredericksen moved to approve the maximum grant award of \$131,610.45 for Bonner County. Trout seconded, and the members unanimously approved the award.

Bonneville: They will be adding additional conflict attorneys and building an office to house them. They will also be adding an investigator. Their conflict attorneys handle all misdemeanor offenses for the city of Idaho Falls. Trout moved to approve the maximum grant award of \$153,063.49 for Bonneville County. Fredericksen seconded, and the members unanimously approved the award.

Boundary: Caseloads are low. This is one that will have difficulty finding attorneys. Wellman moved to approve the maximum grant award of \$25,000 for Boundary County. Perry seconded, and the members unanimously approved the award.

Butte: Perry moved to approve the maximum grant award of \$25,000 for Butte County. Wellman seconded, and the members unanimously approved the award.

Trout asked if there is something the commission could recommend. ED Simmons responded that they will need assistance with the initial appearance requirements.

Camas: Grant money will likely go toward initial appearances and investigative services. Perry moved to approve the maximum grant award of \$25,000 for Camas County. Fredericksen seconded, and the members unanimously approved the award.

Caribou: May be included in the district in-house office. Fredericksen moved to approve the maximum grant award of \$25,000 for Caribou County. Perry seconded, and the members unanimously approved the award.

Cassia: This is the only joint office in the state with Minidoka. They have four attorneys on staff. Fredericksen moved to approve the maximum grant award of \$55,060.99 for Cassia County. Wellman seconded, and the members unanimously approved the award. Perry moved to approve the maximum joint office award of \$25,000. Fredericksen seconded and the members unanimously approved the award. Perry asked if the county had asked about court interpreters ED Simmons replied no they had not.

Clark: Perry moved to approve the maximum grant award of \$25,000 for Clark County, Fredericksen seconded, and all members unanimously approved the award.

Clearwater: The County considered joining with Lewis, however geographically it was not feasible. Wellman moved to approve the maximum grant award of \$25,000 for Clearwater County. Trout seconded, and all members unanimously approved the award.

Custer: ED Simmons shared that it had been relayed to her that clients are not happy with the PD services being provided. Perry moved to approve the maximum grant award of \$25,000 for Custer County. Trout seconded, and all members unanimously approved the award.

Elmore: ED Simmons expressed that this could be a county who benefits from bringing their service in house. Wellman moved to approve the maximum grant award of \$70,691.70 for Elmore County. Fredericksen seconded, and all members unanimously approved the award.

Franklin: Trout moved to approve the maximum grant award of \$25,000 for Franklin County. Wellman seconded, and all members unanimously approved the award.

Fremont: Fremont will be losing their public defender. Wellman moved to approve the maximum grant award of \$25,000 for Fremont County. Fredericksen seconded, and all members unanimously approved the award.

Gem: Contract PD rents office space from the county. Commissioners have a good relationship with him. Wellman moved to approve the maximum grant award of \$27,501.19 for Gem County. Trout seconded, and all members unanimously approved the award.

Gooding: The county provides space and IT support for PDs. Fredericksen moved to approve the maximum grant award of \$55,221.75 for Gooding County. Trout seconded, and all members unanimously approved the award.

Idaho: Wellman moved to approve the maximum grant award of \$25,000 for Idaho County. Fredericksen seconded, and all members unanimously approved the award.

Jefferson: County is considering joining the Capital Crimes Defense Fund. Perry moved to approve the maximum grant award of \$25,000 for Jefferson County, Fredericksen seconded, and all members unanimously approved the award.

Jerome: Wellman moved to approve the maximum grant award of \$69,732.90 for Jerome County. Trout seconded, and all members unanimously approved the award.

Kootenai: Wellman moved to approve the maximum grant award of \$320,334.23 for Kootenai County. Fredericksen seconded, and all members unanimously approved the award.

Latah: Perry shared that it seems like they could use another attorney. Wellman moved to approve the maximum grant award of \$57,592.95 for Latah County. Fredericksen seconded, and all members unanimously approved the award.

Lemhi: PD is retiring. Wellman moved to approve the maximum grant award of \$25,000 for Lemhi County. Trout seconded, and all members unanimously approved the award.

Lewis: Fredericksen moved to approve the maximum grant award of \$25,000 for Lewis County. Trout seconded, and all members unanimously approved the award.

Lincoln: The commission's suggestions included adding an investigator and providing space for the PD. Perry moved to approve the maximum grant award of \$25,000 for Lincoln County. Fredericksen seconded, and all members unanimously approved the award.

Madison: Wellman moved to approve the maximum grant award of \$25,000 for Madison County. Trout seconded, and all members unanimously approved the award.

Minidoka: Perry moved to approve the maximum grant award of \$69,866.50 and the joint grant award of \$25,000 for Minidoka County. Fredericksen seconded, and all members unanimously approved the awards.

Nez Perce: This is another county that could benefit from going in house. Fredericksen moved to approve the maximum grant award of \$99,253.86 for Nez Perce County. Wellman seconded, and all members unanimously approved the award.

Oneida: This county will be joining with Power County, however, they do not yet have an MOU in place. Fredericksen moved to approve the maximum grant award of \$25,000 for Oneida County. Wellman seconded, and all members unanimously approved the award. Wellman moved to approve the joint award of \$25,000 subject to receipt of the MOU. Perry seconded and all members unanimously approved.

Owyhee: Fredericksen moved to approve the maximum grant award of \$25,000 for Owyhee County. Trout seconded, Wellman abstained, and all other members unanimously approved the award.

Payette: Perry moved to approve the maximum grant award of \$46,129.43 for Payette County. Wellman seconded, and all members unanimously approved the award.

Power: As stated previously, Power will be joining with Oneida. Wellman moved to approve the maximum grant award of \$25,000 for Power County. Trout seconded, and all members unanimously approved the award. Wellman moved to approve the joint award of \$25,000 subject to receipt of the MOU, Fredericksen seconded, and all members unanimously approved.

Shoshone: This is another county that could possibly benefit from going in-house the commission should continue to monitor them for this possibility. Fredericksen moved to approve the maximum grant award of \$30,499.20 for Shoshone County. Trout seconded, and all members unanimously approved the award.

Teton: Wellman moved to approve the maximum grant award of \$25,000 for Teton County. Perry seconded, and all members unanimously approved the award.

Valley: Wellman moved to approve the maximum grant award of \$37,749.99 for Valley County. Fredericksen seconded, and all members unanimously approved the award.

Washington: Contracts will be in place soon to bring them into compliance. Wellman moved to approve the maximum grant award of \$25,000 for Washington County. Perry seconded, and all members unanimously approved the award.

- b. **Eligibility:** County Contracts, there is concern that should the standards be too stringent that counties will not be able to find eligible attorneys to fill them in the smaller counties.

7. **Approval of Proposed Rule:** Actual Rule Draft: ED Simmons explained that the first several sections are required as a part of the process. Definitions are listed, if more are needed please let her know. Caseload: Fredericksen asked that it be revised from "handled by" to "assigned to." Perry asked that the Roster Membership include where it is located. The following was added:

"Availability of Public Defense Roster. The roster will be made available from the PDC office upon request."

Standards:

First paragraph: Principles changed to IPIDDS were adopted. "Guide" in last sentence was replaced with "model."

III. B – David Carrol recommended using the national standards until research can be completed then reassess. There was discussion as to how that will affect some of the counties, 15 counties would be affected. Fredericksen said he was comfortable with using the national standard. The recommendation at the public meeting last week was that juvenile be broken down to felony and misdemeanor, however the commission does not have numbers for that. Wellman was asked his opinion on that thought. He responded that is a huge number. The request came from Ada county where they have an in-house office that handles juvenile cases. Trout thought the information would be helpful, but maybe not at this point in the process.

The caseload numbers were changed as follows

1. 150 "non-capital" was then removed
 2. 400
 3. 200
 4. 200
 5. Child
 6. Guardianship was removed and changed to read: 200 civil cases per year
 7. Removed
 8. 35 Non-capital appeal changed to misdemeanor
- c) "Applied proportionately" was changed to "by assessing the percentage of the maximum caseload for each category then combining those percentages. The combined total of the mixed caseload should not exceed 100%." Second sentence changed to: "The caseload limits assume the defending attorney is committing, on average, 35 hours per week on appointed cases. If

the defending attorney spends less than 35 hours per week on appointed cases, caseload limits should be proportionately adjusted downward."

D) Consideration should be given to adjusting the caseload appropriately if an attorney has inadequate support staff or regularly handles case of above average complexity. Added per discussion.

E) Last sentence: change "can" to "should."

H) Add "capital cases," after "weighted toward"

V. B) Added the word "current" in the first sentence. Including "current technology used by law enforcement and other investigative offices and the legal issues concerning defenses that can be raised. Defending attorneys shall..."

Page 2 (E) "or a county commission anytime" needs to be corrected.

E&F) Added after ED Simmons spoke with David Carrol who wanted the standards to be more robust but in the ED's mind that seemed a bit of an overreach. E&F are value added.

G) Added as a recommendation from the ACLU and in agreement with Ada and Canyon.

VI. A) "At the initial appearance" was added to clarify what should occur.

C) Last portion of the sentence was removed for clarification.

Wellman moved to approve the rules and standards as revised. Trout seconded and all members unanimously passed the motion.

Public Meeting Schedule: Ideally ED Simmons would like one commission member at each of the meetings if they are available. The meetings will be held in the evenings from 6-8pm.

October 3rd – Boise, October 17th Caldwell Admin to send full schedule to members.

8. **Executive Session:** Pursuant to Idaho Code 74-206, convene in executive session to consider Commission personnel matters and or litigation (Idaho Code 74-206(1)(a) &/or (f)). An Executive Session was not needed.
9. **Future Meeting Schedule:** October 4, 2016 at 1:00pm.
10. **Next Meeting Location:** PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702
11. **Agenda Items for Next Meeting:** No items were suggested.
12. **Adjournment:** Prior to adjourning, Chair Bolz advised everyone that Commissioner Ricks will be resigning from the commission due in large part to health issues. Winder moved to adjourn, Perry seconded, and Chair Bolz adjourned the meeting at 5:29 p.m.

Attachments: County Plans for Grants
Grant Eligibility FY2017
County Caseload Report
Memo RE: Oral Contracts
Extraordinary Litigation Survey Results Summary
FY2016 Perf Report
FY2018 Budget Request
Proposed Standards for Defending Attorneys