

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 10/4/2016 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: October Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, SAPD | Christy Perry, Vice Chair, Representative | Chuck Winder, Senator | Linda Copple Trout, Representative of the Courts |

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Nichole Devaney, Admin. Asst. | Andrew Masser, Legal Intern

Commission members absent

William Wellman, Defense Attorney |

Others present

Emma McLean-Riggs, ACLU | Ingrid Andrulis, ACLU Paralegal | Adam Jarvis, DFM (arrived at 1:53pm)

Item	Responsible
1. Welcome and Call to Order: Chair Bolz called the meeting to order at 1:07pm.	Bolz
2. Approval of Prior Meeting Minutes (8/30/16 & 9/19/16): Fredericksen moved to approve the minutes from 8/30/16, Trout seconded and the members unanimously agreed. Winder moved to approve the minutes from 9/19/16, Trout seconded and the members unanimously approved the motion with the exception of Perry and Fredericksen who abstained from voting.	Bolz
3. Executive Director Report	Simmons
a. Presentations to IAC: ED Simmons was questioned several times as to why a statewide system is not being put in place. As a result of those questions she and Mr. Masser put together some additional slides for the following days presentation to help overt the questions. In addition, during the presentation she asked them to attend the public meetings and encouraged them to contact the PDC with any questions. Senator Winder commented, that he received a call from his counterpart in Blackfoot and the county commissioners had contacted him regarding some concerns they have about the standards. ED Simmons responded that she is aware that the case load standards are of concern to many of the commissioners. 15 counties will be out of compliance with the standards in place. Winder commented that some personal attention from ED Simmons would go a long way.	
b. Testimony in Renfro Case (Kootenai County): No concerns were raised during the testimony. Questions were strictly related to the caseloads numbers from the grant application. Perry mentioned she had spoken to David Carroll of the Sixth Amendment Center and this is something other states are also doing. It seems to be a nationwide push elsewhere.	
c. Post-It Notes on the Walls of the PDC Office: The notes on the wall contain the statutes and were used to construct the memo regarding the local share calculation	

discussed during the conference call on September 19th. The notes in the hallway are pulled from the statute as well, to help the staff focus on statutory requirements for both the commission and counties, rules and policies needing development. Trout asked if it would be of interest as to how the vote came about during the last conference call. Perry expressed that yes she would like to hear a summary of the call. ED Simmons began explaining that the discussion was never really how the calculation of the local share was done the true question was which fiscal year should be represented. She proceeded to go through the statute and gave the explanation. Perry stated that the different fiscal years were very difficult in setting the statute. She continued explaining that if there is some clarification needed it certainly is something the commission should bring forward to the legislature.

4. Office Staffing Needs

Simmons

- a. **Temporary Employee:** ED Simmons wanted to have a job description for the liaison positions but that did not work out and it may not be something the commission needs at this point. Having Andrew in the office has been a huge help. Therefore, she would like to hire a temporary research position to assist with the commission work prior to hiring the liaison positions. Having completed some calculations, the commission can easily accommodate the temporary position with the delayed hire of the liaisons. Winder commented that the original request to the legislature was for seven liaison positions, the legislature said no to that proposal and allowed for three. Therefore, he feels that the commission should have the ability to dictate what the liaison position needs are. Bolz commented that whatever is decided she will need to be prepared to discuss that with JFAC. ED Simmons responded she would absolutely be prepared to do that and that there is a need for the liaisons just not at this moment. Perry shared that part of the liaison's role was anticipated to provide a sounding board for unhappy and/or underserved clients, as there is no one providing that service currently. If a client is unhappy about his/her representation, there is no real avenue to express that. She does not want that aspect of the liaison's role lost, which is what lead to the part-time/full-time positions discussion. Having a relationship with the clients is a very important role for the commission. Fredericksen asked what ED Simmons envisioned for the liaison position. She responded that they would play a role in contract preparation and monitoring as well as client relations. Trout offered that they could provide suggestions as to how to improve the systems within their districts. Fredericksen shared that it would be very educational for the commission to know the different processed in the counties. Winder asked what she would need to facilitate the temporary position. ED Simmons then requested a vote from the commission on the temporary position. Fredericksen asked if she had spoken to Adam Jarvis, she responded she had not yet, she anticipated he would be attending today's meeting and so that it could be discussed. Fredericksen moved that ED Simmons be allowed to hire a temporary employee to conduct research, Trout seconded and all member unanimously approved the motion pending approval by Adam Jarvis. Adam Jarvis joined the meeting later and ED Simmons explained the position need and the commission's approval. Mr. Jarvis expressed that as long as this will not result in an overage in the personnel budget he is in agreement.
- b. **District Liaisons:** Perry shared that if the Liaisons are not needed in January it can be postponed until necessary.
- c. **Training:** ED Simmons would like to send K. Jennings to a training in New Orleans. She went through the information about the conference. The program will be very

good training for her as she is not a public defender. The cost of program including travel will be under \$1,900.00. Trout asked if there was an indication as to whom this training is for. ED Simmons responded that it is open to just about anyone who is involved in the court system. Jennings offered that Wednesday and Friday are more academic in design and Thursday will be more of a practical day. She added that the networking aspect would be the most helpful. Fredericksen moved that the commission send K. Jennings to the training, Trout and Perry seconded. The members unanimously approved the motion. Fredericksen commented that the holistic public defense is the trend at this point so any information would be valuable.

5. **Annual Reporting Form:** ED Simmons went through the form, providing details regarding the two tables and the information requested. Trout pointed out a typographical error. She then asked if a joint county office would need to complete the report separately or if they could file jointly. It was decided that each county provide the information rather than jointly. Fredericksen commented that he would like to see how many cases are actually going to trial. The members agreed this would be helpful information and a column will be added to delineate that information. Per statute expenditures are being requested but they are limited based on information that will likely be available. Winder asked if someone questions why the commission is requesting this information what answer would be provided. ED Simmons responded that it is required by statute, additionally it is information the legislature requested to determine funding and other issues. Fredericksen commented that the commission needs to be careful of what information they request so as not to interfere with attorney client privilege. Perry asked when the report is due from the PD's. ED Simmons responded that it is due November 1st, thirty days after the close of their fiscal year. Fredericksen moved to approve the report with the edits, requesting that a copy be sent to the members prior to distribution to PD's. Trout seconded and the member unanimously agreed.
6. **Extraordinary Litigation – Policy:** The statute allows the commission to develop procedures in regard to ELF (Extraordinary Litigation Funds). ED Simmons reviewed the draft definition. Trout asked if the definition is in regard to cost or litigation. She was under the impression it was cost, Fredericksen agreed. Perry commented that it needs to be specific to the counties. What is extraordinary to a rural county may not be to the larger counties. ED Simmons responded that she agreed, the specificity to the counties could be considered under the requirements and eligibility section. Perry shared that the reason the Interim Committee crafted it as they did was so that counties were not determining a case based on monetary restrictions. Fredericksen asked to have additional time to review the information in greater detail. ED Simmons went on to explain that funding would be provided in a two phase process. The definition would not be the definitive decision point. Trout shared that it was her impression that these funds were supposed to be available separate and in addition to the local share participation and grant awards. Perry responded that was not the Interim Committee's intent, it was meant to be a supplemental to the grant awards and local shares. If the local share and grant award funds were exhausted, then a county could apply for these funds. She added, however, that the Commission is able to make a determination if there is a need otherwise. ED Simmons agreed to add a special circumstances portion to the definition. Perry shared that the Commission has the discretion to make any delineations. Bolz asked if the members could have some time to review the information and make a determination at a later date. ED Simmons responded that yes that was fine, then commented on a few areas in the policy they should give some consideration to. ED Simmons spoke about the possibility of getting an exemption regarding public records access for these awards. Bolz suggested reaching out to the AG's office. Fredericksen suggested reaching out to Cally specifically as she has extensive experience regarding public records requests.

Perry asked if the case number and name were necessary for the application; Fredericksen and Simmons concurred that it would be necessary to verify the case existed.

Perry asked when funding should be available. Trout commented that she is concerned if it were a reimbursement that the counties may not have the funds needed up front. Bolz asked what would happen to funds if paid upfront and the case didn't go to trial. The commission should only approve what is actually being used. Bolz asked that the members review the information and provide comments at the next meeting.

7. **Training Rules:** While reviewing the statute, ED Simmons discovered some "shall" and "should" language that could change things a bit. The training piece was listed under the "may" section which is separate from the section cited on the training rule. Therefore, she asked if the commission should amend the current training rules to reflect the appropriate section of the statute or resend them and make them a policy. A policy can be easily changed whereas rules are much more difficult. There are other amendments that need completed with the decision is made to continue with the rule or change it to a policy. Bolz commented that his concern is that with rules your able to obtain feedback from the public but with a policy that is not necessarily true. ED Simmons shared that getting feedback on policies would be her intent regardless. Bolz and Perry agreed that any policies developed would need to be transparent. ED Simmons responded that she would never develop a policy without bringing it to the commission for approval within an open meeting forum. Perry commented that based on the Interim Committee meetings that their preference was to develop rules. ED Simmons responded that she will make the amendments to the training rule to reflect the correct statute. Simmons
8. **Budget Amendments** Simmons
 - a. **Research – Workload Study:** The members reviewed the proposal from BSU to provide the workload study. ED Simmons shared that Mr. Hoskins felt the commission's best avenue would be to request a onetime supplemental object transfer. It was expressed that the commission is allowed to do the object transfer, however requesting permission would be the preferred method for the legislature. Perry recommended using the merger grant funds for the object transfer as that fund was known to be overfunded. Perry also shared that because BSU is a state funded organization she has an issue with the program costing the commission. Additionally, no other bids were requested. Winder shared that he understands the concern about no other bids, but as he understands it the research department of BSU is not actually state funded. Mr. Jarvis questioned whom from DOP provided the information regarding the RFP processes. Mr. Masser responded that Valarie Bollinger had confirmed that information. The members had questions regarding the proposal and some of the specific costs. ED Simmons responded that she will ask those questions from BSU and if the commission would like to go through the RFP process then she will do so. Winder offered to join ED Simmons to speak to them regarding the cost structure and how those positions are funded. Mr. Jarvis asked if the money would be expensed in FY2017 given the 12-month research period? Trout responded, asking whether agencies were allowed to designate the money for the fiscal year even if it is not expensed by the close of the year. Mr. Jarvis responded yes, however a contract or some form of intent must be in place. ED Simmons will set up a meeting with BSU and the members are invited to attend. Once questions are answered then a conference call could be held to approve/disapprove the supplemental request.
 - b. **Immigration Consultant:** ED Simmons would like to request a supplemental FY2017 object transfer and amendment to the FY2018 budget to provide immigration

consulting. In speaking with Maria Andrade the allocated amount of \$25,000 will cover consulting fees. An RFP would be required for this service as it will be an ongoing service. Bolz asked what the counties are currently doing. ED Simmons explained that many of the counties are already consulting with Andrade who is providing that service free of charge in most cases. Others are using other immigration attorneys and one county intended using some of their grant money for this service. Fredericksen asked how this may impact attorney client privilege and if any research had been done in that regard. Perry commented that the legislature would ask why grant funding is not being used for this service. Trout had the same question. Perry explained that it should be the PDC's position to provide resources to the counties and the legislature would not be in favor of this ongoing expense when this is the type of thing the grant funds were provided for. Fredericksen asked if this is a line item that could be reported on in the annual report to provide the commission with an idea of how often it is needed. The members agreed that a survey needed to be completed to provide the information necessary for them to make a determination as to if it could be a service provided by the commission at a later date.

9. **Proposed Rule Public Meeting Schedule:** Simmons
 - a. **Who is Attending?:** Fredericksen is available the 19th, 20th, 25th and 26th. Bolz and Perry are available for the Caldwell meeting on the 17th. Perry may be able to do the 20th. Fredericksen agreed to attend the Northern meetings on the 25th and 26th and requested the Admin make travel arrangements. Trout can attend the 17th as well. ED Simmons will contact Mr. Wellman for the other dates.
10. **Rulemaking Priorities** Simmons
 - a. **Statutory Requirements vs. Indigent Defense Standards:** ED Simmons stated that the statute requirements are not standards, they are simply statutorily required. The standards currently being promulgated are what is needed to be compliant for the grant process.
 - b. **Enforcement – Auditing Use of Grant Funds:** This topic was not discussed.
 - c. **Compliance Requirements – Proposed Compliance Checklists:** The counties can use these newly created lists to determine if they are eligible to apply for the indigent defense grant. The difference in the FY2018 and FY2019 lists are based on approval of the standards.
 - d. **Other Priorities for Next Year (Start negotiated rulemaking in early 2017):** ED Simmons proposed starting the negotiated rulemaking process earlier this year to allow enough time for the process. The commission will need to begin focusing on the other standards they would like to create in early 2017.
 - e. **Kootenai County:** The audio file was played from the Kootenai County Commissioners meeting on September 30th. Fredericksen asked if ED Simmons had met with the commissioners since receiving this information. She responded she had not. She referenced the statute which indicates that should standards not be in place the money is to be used toward the betterment of public defense. Perry indicated that section was put in the statute for this specific purpose and that the interim committee knew standards would not be in place. ED Simmons asked the members to review the response memorandum provided. Perry wondered if this county had this confusion regarding the funds, are there other counties having the same issue. She asked if a letter should go out to all the counties. ED Simmons responded that yes she thinks that would be appropriate. Winder commented that the last paragraph of Mr. Adams letter hits the nail on the head, adding that if that is the case then they should be

required to return the money. Memorandum Revisions: Some concerns be changed to significant concerns. Perry asked how the commission obtained the audio file and ED Simmons explained that two different staff members from the Kootenai County PD's office contacted her and sent the file. Perry offered that she believes this may be common among the counties. The members asked that a letter be sent to each of the counties referencing the statute that dictates what the money is to be used for and that it is a supplement. There are standards in the statute. 2nd paragraph: put improve in italics for emphasis. Jennings offered that maybe the last line should be removed to reduce combativeness, making it potentially less argumentative, and suggested the first paragraph be changed to remove the last sentence for the same reason. Trout offered that she would like to see stronger language. Fredericksen asked what the commission's recourse is should they continue to use the funds as they intended. ED Simmons responded that future funds would not be awarded. Winder offered that we should ask for it back as it is not being used properly. Bolz offered that because the money is being allocated in the Justice Fund therefore that could be the argument. The members agreed that depositing it in the Justice Fund if it is specifically allocated for public defense and can be tracked that way that is fine. Perry offered that the last sentence be removed in the 4th paragraph. ED Simmons asked if the members would like her to send a copy of the revised memo to all of them or just the chair. The members agreed it could just go to the chair. She added that she will send a letter to all the other counties as well. Fredericksen asked that a copy of the letter be sent to all the members upon completion.

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| 11. | Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider personnel matters and or litigation (Idaho Code 74-206(1)(a) &/or (f)). An executive session was not requested. | Commission |
| 12. | Future Meeting Schedule: November 1, 2016 at 1:00pm. | |
| 13. | Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702 | |
| 14. | Agenda Items for Next Meeting: Extraordinary Litigation Funds | |
| 15. | Adjournment: Chair Bolz adjourned the meeting at 4:28pm. | Bolz |

Attachments: Proposed Policy – Extraordinary Litigation*
 Proposed Extraordinary Litigation Grant Application*
 Proposed Annual Reporting Forms – Contract and Institutional office*
 Notice of Intent – Proposed Rule
 Compliance Checklists: FY2018 and FY2019
 Materials re: Conference in New Orleans (Jennings)
 Letter to BOCC of Kootenai County from John Adams
 Email from Jared Hoskins re: Supplemental Budget Request
 Email - BSU Research Proposal