

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 11/1/2016 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: November Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, SAPD | Christy Perry, Vice Chair, Representative | Chuck Winder, Senator, arrived at 1:07pm | William Wellman, Defense Attorney | Linda Copple Trout, Representative of the Courts |

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

Commission members absent

Others present

Kathy Griesmyer, ACLU

Item	Responsible
1. Welcome and Call to Order: Chair Bolz called the meeting to order at 1:04pm.	Bolz
2. Approval of Prior Meeting Minutes (10/4/16): Trout moved to approve the minutes from 10/04/16, Fredericksen seconded and the members unanimously approved the motion.	Bolz
3. Executive Director Report	Simmons
a. John Adams's Email: Mr. Adams email states that he was unhappy with the Commissions response to the grant funding matter in Kootenai County. He is aware that ED Simmons met with the county commissioners and they explained they intended to spend the money on public defense. But it is ED Simmons position that it is not the commission's place to tell the county commissioners specifically how they are to spend the funds. Chair Bolz shared that the commission does not need to get into the middle of the issue with these two parties as there is a long standing conflict. Trout asked where Mr. Adams feelings stem from. ED Simmons explained that she was unsure. But it seemed the disappointment was that the money was not instructed to go directly to his office. ED Simmons asked if the commission would like to form a response, Wellman asked if the other members felt it was their position to tell the counties how to use the moneys and the members agreed that would be over stepping their bounds. Winder stated that the commission does have a responsibility to make sure the counties use it correctly and the members agreed.	
b. Issue in Blaine County: ED Simmons received a call from Commissioner Shone. She ran through a contempt case they had discussed. A public defender was appointed in the case after the defendant could no longer afford counsel. The contracted attorney would not provide services because it was outside the scope of their contract. Therefore, the Judge appointed an attorney that is not contracted with the county at a rate of \$135 per hour which is much higher than the contract rate and the county was	

then issued a bill. ED Simmons agreed with Commissioner Shone that it did not seem appropriate that the judge was able to appoint an attorney not under contract that the county was required to pay. The members asked what Commissioner Shone was needing from the commission. ED Simmons shared that he was just looking for an opinion. Fredericksen shared that this seems more like a county issue and not something the commission should play a role in. Trout shared that the solution would be that the counties' contracts be written in a way that covers these type of situations. Bolz expressed that this is another example of how the commission should be assisting the counties on the development of contracts so that issues such as this are covered. ED Simmons explained that in circumstance where the judges appoint counsel outside of those contracted with the county the commission loses its oversight authority. Trout shared that the hope is that county commissioners will sit down with the appointed attorney in those instances and direct them as to what is expected.

- c. **Grant Funds in Bannock County:** ED Simmons explained that she had received a call from Bannock County, their auditors had taken \$25,000 of their IDG award for administrative services. ED Simmons instructed them that they should discuss this with their commissioners and they did so. The auditors agreed to return the money but stated that the fee would be taken out of next year's grant award. Bolz suggested discussing this with Dan Chadwick as this would not be an acceptable process. Trout asked if this is something that should be addressed in statute. ED Simmons explained that in normal grant processes this type of deduction would be typical given that the auditors play a large role in preparing the information required for most grant applications. However, the department played no role in the IDG process. Bolz shared that he participated in a similar grant program and they had to include a letter to specify it's use or the university would have taken 17%. ED Simmons stated that she had not heard of the other counties having this issue. However, a concern was raised by Paige Nolte in Nez Perce county with respect to qualifications. Wellman asked if there is something that can be done from the bench side such as education on the issue. Trout agreed yes it could be at the District Judge level. She stated that if ED Simmons could provide some concrete examples then she could suggest that they have a discussion about it. The next meeting will be in February. ED Simmons agreed to have something prepared.

4. Deputy Director Report

Jennings

- a. **Public Hearings Summary:** DD Jennings prepared a summary for the members on the public meetings that included attendance and comments that stood out. The consensus was that funding would stop making it an unfunded mandate. Because of the uncertainty of the funding, commissioners are reluctant to hire new staff. Another common question raised was, what happens if the county doesn't comply. The response provided was that at this point a rule regarding non-compliance has not been developed but it will be in the future. Some stated that the local share calculation should be looked at again, using the five-year history does not account for increases that were created in the last two years with contract requirements. How indigent assignment is made seems to be a problem. A lack of education could be a large component to this issue. How tracking of the grant funding would be handled was also a question. DD Jennings suggested that tracking could be addressed within this year's grant program. Many counties feel that indigent defense is a role of the state. There are fears that if counties are required to comply with the standards they may lose experienced attorneys requiring them to hire inexperienced attorneys at a lower wage. Trout asked if the workload study would include information on experience. ED

Simmons responded that it could be a factor included in the study. DD Jennings continued sharing that another concern is that many of the counties have already hit their levy limit and there is no way to exceed those. It was also shared that in one county judges are not allowing bond arguments. Another county does not have enough trial space. Education requirements were also discussed as possibly being a burden, to include specialized case education. Most counties had issues with the should and shall language. Flow of cases around the state is of concern. If attorneys are unable to accept a case based on caseload they are concerned the judges and commissioners would push back. Caseload standards should not be set until a study has been completed was one Commissioners statement. The definition of a case is a problem for various counties. Changes with representing clients at arraignment pose issues for a few counties. Some attorneys are not receiving notification that they have been appointed until three days after the appointment. District 7 had a concern regarding contract attorneys and the county being required to provide benefits based on an IRS Audit. Trout shared that this issue was raised out of other court staff but she does not see how an independent contractor could fall under that category. Bolz asked about the concerns with the should and shall language. ED Simmons and DD Jennings responded that some were in general and others specifically regarding caseloads. He shared that he is concerned about the limitation that were placed on the commission by the legislature. ED Simmons responded that she is sharing with folks at these meeting that the commission will bring things to the legislature as they arise to help better fulfill the counties and states responsibility.

5. **Extraordinary Litigation Policy:** ED Simmons shared that one of the largest questions is whether this policy will be for reimbursement or at the time of need. Wellman asked if county commissioners are asking about the funds. ED Simmons responded that yes they are. Bolz asked if one county should be allowed to utilize all the funds or if it should be prorated and dispersed amongst all the counties. Winder then asked what time period would the fund be allocated for. Trout asked if this was something the public defender would make a request for rather than the county. And, therefore she has made the assumption that it would be prospective rather than reimbursement. Making it separate and apart from those funds awarded to the county. Wellman shared that his practice has been to make a motion to the court for the funds and he has never been turned down. His feeling is that this money should be used only if other avenues of funding have been denied. Trout and ED Simmons responded that if a judge has made a judgment that it is not needed it would not be appropriate for the PDC to come in and make those funds available. ED Simmons envisioned that it would be available to both PD's and Counties to recoup costs over and above what was anticipated. Wellman shared that the legislature gave pretty good direction within statute. Wellman stated that he would like to work with ED Simmons on the policy. Bolz shared that his concern is allocation of the funds. If you work on a reimbursement basis would the first few counties who apply get to use all of the funding. Concerns with regard to attorney cost being included as part of the determination of extraordinary can be eased using the definition of what the funds can be used for. ED Simmons expressed that the role of the BOC in this process would be to make sure everyone was aware what the status of the indigent defense fund was. Bolz asked what questions the counties are asking, she shared that they had been asking how to apply, how far back would expenses be reimbursed, what is extraordinary. Wellman asked if other states have a policy similar to this could Mr. Masser please share it with the members. Especially if they are mountain west regions. Trout expressed that we could set a minimum at this point then expand after that. ED Simmons shared that this was originally created to allow the Commission to have discretion but leaving it broad enough to apply. Winder offered that

Simmons

the commission could put a cap on the amount of funds expended, Wellman offered that a dollar amount would probably be better than a percentage. Bolz expressed that he gets the sense that some of the members would like some additional time to review the policy so if they would please do so and then bring that information back for a discussion among all the members. ED Simmons expressed that as these applications come in the commission may be able to better create a definition, and develop the policy. Fredericksen and Wellman agreed to review the policy and have suggestion prepared for the next meeting.

6. **Proposed Rule – Review Comments Received:** The caseloads in some counties seem to be of grave concern however that is not the case up north based on the public meetings. After having left the meeting with District 7, ED Simmons considered utilizing a range to help ease the concerns. After more discussion, ED Simmons decided to add language that would allow for overages based on certain circumstance that would be under the Commission's discretion. The allowance she was considering is 120% which would ease some of the counties burden. Section B1 changes came about based on issues with the definition of a case. Winder asked if there is a sliding scale that could be implemented based on the type of case. The members discussed it and agreed the national standard is not scientifically developed, making the Idaho study very important. Wellman shared that it should be specified that we are setting standards based on little to no information. ED Simmons shared a calculation regarding the allowance percentage. Trout agreed with Wellman's statement that these are simply guidelines until there has been an opportunity to conduct an Idaho specific caseload study. She feels this language will help to ease concerns. ED Simmons will do some wordsmithing on C to include the member's comments. Trout asked Winder if the legislature would be able to dismiss the whole rule based on a few sections. Winder and Bolz said that no they are allowed to reject based on sections of the rule. Fredericksen asked where the number came from for B6. ED Simmons responded that it is the national standard. With regard to the SAPD he has a concerns. ED Simmons responded that this standard would not apply to the SAPD but going forward the weighted scale could be implemented. ED Simmons asked if the members are ok with the changes that are listed in red for section B. Wellman asked about the juvenile case numbers and ED Simmons shared that she had received some comments stating it could be higher. Section V.A. – The statue is very specific and ED Simmons thought adding it would be good. Section V.B. needs the addition of immigration law, Wellman suggested adding it after criminal procedure. The members decided to word it differently as indicated. Immigration was added to Section V.H – and an edit was included to reference training. Section V.H.e. – Immigration was added. Vertical representation was discussed at the meetings but no changes were made. Section VI.A. edits were made to accommodate those who have training constraints. Within the rule it's self the Definition of a Case- Currently there is a conflict between points 1 and 5. The supreme court is working on revising the definition at this time. Due to inconsistency's in the counties ED Simmons suggested the commission make their own definition. Bolz asked if Odyssey will be using the supreme court one. Trout responded that Odyssey will not be making the determination how the case is entered. The suggestion was to have it defined based on the case number. ED Simmons asked if the members were okay with her reworking the definition and sending it out to the members prior to the next meeting. At this juncture the commission should use a definition that is acceptable then continue to work on it as we go forward. Bolz asked about comments from Bonneville County. ED Simmons and DD Jenkin's reviewed their specific comments. The main concern was caseload standards and how that would impact their budget. Fredericksen shared that until the workload/caseload study is completed the commission would not truly know what caseloads look like as the data received at present is not consistent.

Item	Responsible
7. 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 necessary at this meeting.	Commission
8. Future Meeting Schedule: December 6, 2016 at 1:00pm. – The members rescheduled the meeting for November 22 nd at 1:30pm.	
9. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702	
10. Agenda Items for Next Meeting: Extraordinary Litigation and Approval of the Proposed Rule	
11. Adjournment: Wellman moved to adjourn the meeting, Trout seconded and the members unanimously agreed. The meeting was adjourned at 3:57pm.	Bolz

Attachments: